1428.

SUPREME COURT OF THE UNITED STATES.

No. 121.

THE STEAMBOAT NEW YORK, her Tackle, Apparel, &c., THOMAS C. DURANT, CHARLES W. DURANT and SEPTIMUS LATHROP, Claimants, App'ts,

vs.

ISAAC P. REA, Owner of the Brig SARAH JOHANNA.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Certificate of Clerk Circuit Court	1	3
" " District Court	2	3
Proceedings in District Court	3	3
Libel and complaint	3	4
Stipulation for Libellant's costs	11	7
Monition and Return	13	8
Bond to Marshal	16	9
Answer of claimants to libel	21	11
Deposition of Diedrick C. Diedrichssen	27	14
" Peter S. Svarran	33	17
" Johann T. Mayland	36	19
" James Peter Jurgensen	38	20
" Loren T. Jensen	39	21
" Lane Lovenson	41	22
" N. L. Richelson	43	23
" James B. Edwards	46	25
" James Pickett	52	28
" Jorgen H. Callison	57	31
" David Kelso	62	34
" Henry Rudd	62	34
" Cornelius Regan	62	34

	Original.	Print.
For Defence.		
Deposition of Hart L. Murray	63	35
" Daniel Salisbury	68	37
" Charles Kane	72	39
" Ralph Carwell	75	40
" John J. Kipp	76	40
" Francis T. Quintard	77	41
" George Porter	78	41
" Joseph H. Rhoades	79	42
" Patrick Bergen	81	43
" Amasa P. Clarke	82	43
" Joseph Carroll	83	43
" John Reed	84	44
" Gilbert J. Riley	85	44
" Samuel M. Williams	86	45
" Peter Devoe	87	45
" Don Fuller	88	46
For Libellant.		
Deposition of James I. Wilkie	88	46
For Defence.		
Deposition of Amos Comstock	90	47
Cause referred to Commissioner	91	47
On Reference.		
Deposition of Henry R. Secor	93	47
" Zeno Secor	95	49
" William Thompson	96	49
" Gus. Kraft, Niles Sjsberg, and Frederick Ornskow	97	50
" Louis C. Daklstrom	98	50
Schedule A, J, B.	99	51
" B, J, B.	101	53
Affidavit of Louis C. Daklstrom	102	53
Commissioner's Report	103	53
Claimants' Exceptions to Commissioner's Report	105	54
Decree of District Court on Commissioner's Report	107	55
Final decree of " "	108	55
Notice of Appeal	110	56
Appeal Bond	112	56
Petition of Appeal	114	57
Decree of Circuit Court	118	59
Petition of Appeal to Supreme Court	120	59
Appeal Bond	124	60
Citation	126	61
Service of Citation	128	62

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John W. Nelson, Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this seventh day of December in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the said United States the seventy-ninth.

[SEAL.] JOHN W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 21st day of May, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the said United States the seventy

[L. S.] GEO. W. MORTON,
Clerk.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Monday, the fourth day of April, in the year of our Lord one thousand eight hundred and fifty-three: Present, the Honorable Samuel R. Betts, District Judge.

ISAAC P. REA
vs.
THE STEAMBOAT NEW YORK, her tackle, &c. } 8,504.

January 21, 1852.

On motion of Messrs. Betts and Donohue, Proctors for the libellants, ordered hearing.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel and complaint of Isaac P. Rea, owner of the ship or vessel called the Sarah Johanna, her tackle, apparel and furniture, against the steamboat or vessel called the New York, her engines, boilers, tackle, apparel and furniture, and also against all persons lawfully intervening for their interest in said steamboat, and also against John Doe, master of the said steamboat; and thereupon the said libellant alleges and articulately propounds as follows:—

First. That this is an action founded upon civil and maritime, and the said steamboat, her tackle, apparel, &c., are now within the District, and within the Southern District of New York, and said defendant is also within the district and jurisdiction, and has also goods and chattels, credits and effects therein.

Second. And this libellant further propounds, that this libellant now is, and at the times hereinafter was the sole and only owner of the said ship or vessel, Sarah Johanna, her tackle, apparel, and furniture; that said ship is of the burthen of about two hundred and fifty tons, and belongs to the port of , and was at the time hereinafter mentioned in the port of New York, and bound on a voyage to sea.

Third. And libellant further shows that at all the times hereinafter stated until the committing of the grievances, damage, and injuries hereinafter stated by the said steamboat to the said ship, was a tight, staunch, and strong ship, well and sufficiently manned, tackled, and apparelled.

Fourth. And libellant further shows that said vessel having on the fourth day of November, instant, taken on board ballast, and being ready to undertake a voyage on which she was then bound, and for which she was then chartered, to wit: from New York to Charleston, thence to Buenos Ayres, with a full cargo, and for which voyage the said libellant was to be paid by said charterer the sum of thousand dollars; and said vessel being so ready, and having taken on board said ballast, on the fifth of November the pilot came on board, and the vessel left the wharf and proceeded into the stream, and made ready to sail next morning in the usual manner, and at a safe and proper distance from the shore on either side, but being nearest the Jersey shore; that said vessel on the evening of said fifth of November had a watch duly set on board.

Fifth. That during the night, the wind having freshened considerably, the said vessel's chain was paid out in order to let her ride easier, and to accomplish this more chain was paid out, to about 75 fathoms chain was paid out.

Sixth. That while the said ship, Sarah Johanna, was lying in this condition and safely anchored, at about half past three in the morning of the sixth of November the steamboat New York, having in tow a number of barges or boats, bore down on the said ship, and although the crew of the libellant's vessel did all in their power to prevent a collision, and paid out all the chain remaining—some fifteen fathoms—yet those in charge of the said steamer so negligently and unskil-

1430

fully ran afoul of and into the said ship or vessel, tearing open the bows of said ship, smashing in and breaking bow timbers of said vessel, splitting and destroying the cutwater, bowsprit, and rigging attached, driving in and breaking the ceiling plank inside of the bow timbers, jarring and starting the whole vessel, that said vessel began immediately to leak badly and with difficulty kept afloat until the ballast was shifted, and still continued and now continues to leak badly in consequence of that collision.

Seventh. That said collision occurred wholly through the fault, carelessness, and bad management of those on board the steamer, and in consequence of the negligent and unskilful manner in which said steamboat was navigated and directed, and was not imputable to or the fault of those on board the said ship; that the officers and crew of said ship did all in their power to prevent said collision, and that the same might easily have been avoided had the persons in charge of said steamboat taken proper care and precaution, and navigated and directed their vessel in a proper and prudent manner.

Eighth. That in consequence of said collision it will be necessary to give said vessel, called the Sarah Johanna, extensive repairs, and to have said vessel taken into dock and re-caulked in many places, and other expenses incurred on her, which libellant alleges will be full the sum of three thousand one hundred, which is the result of said collision.

Ninth. That the said vessel called the Sarah Johanna was, at the time of the collision, a tight, staunch vessel, worth the sum of ten thousand dollars; that in consequence of the violence of said collision and the shock thereof, the said vessel is injured in her frame and hull in many respects, which it would be impossible to repair unless said vessel is rebuilt; and said vessel is, in consequence thereof, deteriorated and damaged in value fully the sum of one thousand dollars.

Tenth. And libellant further shows that said repairs, being very extensive, will take a long time; and, as he alleges and charges, at least one month to complete; that said vessel is a vessel of tons, having a captain, two mates, nine seamen, and a cook and steward, whose board will have to be paid and satisfied, and whose wages will also have to be paid and satisfied by the libellant during said time, and that libellant claims a reasonable sum for the detention of said vessel while making said repair, which he alleges is the sum of forty dollars per day, making for said estimated time the sum of twelve hundred dollars; making in all, together with the damages done to said vessel and the repairs rendered necessary thereby, and the deterioration, in consequence of said collision, in the price of said vessel, the sum of five thousand seven hundred dollars.

Eleventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by him exhibited in this cause.

The libel and complaint of Isaac P. Rea, owner of the ship or vessel called the Sarah Johanna, her tackle, apparel and furniture, against the steamboat or vessel called the New York, her engines, boilers, tackle, apparel and furniture, and also against all persons lawfully intervening for their interest in said steamboat, and also against John Doe, master of the said steamboat; and thereupon the said libellant alleges and articulately propounds as follows:—

First. That this is an action founded upon civil and maritime, and the said steamboat, her tackle, apparel, &c., are now within the District, and within the Southern District of New York, and said defendant is also within the district and jurisdiction, and has also goods and chattels, credits and effects therein.

Second. And this libellant further propounds, that this libellant now is, and at the times hereinafter was the sole and only owner of the said ship or vessel, Sarah Johanna, her tackle, apparel, and furniture; that said ship is of the burthen of about two hundred and fifty tons, and belongs to the port of , and was at the time hereinafter mentioned in the port of New York, and bound on a voyage to sea.

Third. And libellant further shows that at all the times hereinafter stated until the committing of the grievances, damage, and injuries hereinafter stated by the said steamboat to the said ship, was a tight, staunch, and strong ship, well and sufficiently manned, tackled, and apparelled.

Fourth. And libellant further shows that said vessel having on the fourth day of November, instant, taken on board ballast, and being ready to undertake a voyage on which she was then bound, and for which she was then chartered, to wit: from New York to Charleston, thence to Buenos Ayres, with a full cargo, and for which voyage the said libellant was to be paid by said charterer the sum of thousand dollars; and said vessel being so ready, and having taken on board said ballast, on the fifth of November the pilot came on board, and the vessel left the wharf and proceeded into the stream, and made ready to sail next morning in the usual manner, and at a safe and proper distance from the shore on either side, but being nearest the Jersey shore; that said vessel on the evening of said fifth of November had a watch duly set on board.

Fifth. That during the night, the wind having freshened considerably, the said vessel's chain was paid out in order to let her ride easier, and to accomplish this more chain was paid out, to about 75 fathoms chain was paid out.

Sixth. That while the said ship, Sarah Johanna, was lying in this condition and safely anchored, at about half past three in the morning of the sixth of November the steamboat New York, having in tow a number of barges or boats, bore down on the said ship, and although the crew of the libellant's vessel did all in their power to prevent a collision, and paid out all the chain remaining—some fifteen fathoms—yet those in charge of the said steamer so negligently and unskil-

fully ran afoul of and into the said ship or vessel, tearing open the bows of said ship, smashing in and breaking bow timbers of said vessel, splitting and destroying the cutwater, bowsprit, and rigging attached, driving in and breaking the ceiling plank inside of the bow timbers, jarring and starting the whole vessel, that said vessel began immediately to leak badly and with difficulty kept afloat until the ballast was shifted, and still continued and now continues to leak badly in consequence of that collision.

Seventh. That said collision occurred wholly through the fault, carelessness, and bad management of those on board the steamer, and in consequence of the negligent and unskilful manner in which said steamboat was navigated and directed, and was not imputable to or the fault of those on board the said ship; that the officers and crew of said ship did all in their power to prevent said collision, and that the same might easily have been avoided had the persons in charge of said steamboat taken proper care and precaution, and navigated and directed their vessel in a proper and prudent manner.

Eighth. That in consequence of said collision it will be necessary to give said vessel, called the Sarah Johanna, extensive repairs, and to have said vessel taken into dock and re-caulked in many places, and other expenses incurred on her, which libellant alleges will be full the sum of three thousand one hundred, which is the result of said collision.

Ninth. That the said vessel called the Sarah Johanna was, at the time of the collision, a tight, staunch vessel, worth the sum of ten thousand dollars; that in consequence of the violence of said collision and the shock thereof, the said vessel is injured in her frame and hull in many respects, which it would be impossible to repair unless said vessel is rebuilt; and said vessel is, in consequence thereof, deteriorated and damaged in value fully the sum of one thousand dollars.

Tenth. And libellant further shows that said repairs, being very extensive, will take a long time; and, as he alleges and charges, at least one month to complete; that said vessel is a vessel of tons, having a captain, two mates, nine seamen, and a cook and steward, whose board will have to be paid and satisfied, and whose wages will also have to be paid and satisfied by the libellant during said time, and that libellant claims a reasonable sum for the detention of said vessel while making said repair, which he alleges is the sum of forty dollars per day, making for said estimated time the sum of twelve hundred dollars; making in all, together with the damages done to said vessel and the repairs rendered necessary thereby, and the deterioration, in consequence of said collision, in the price of said vessel, the sum of five thousand seven hundred dollars.

Eleventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process, in due form of law, according to the course of Courts of Admiralty and of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the steamboat New York, her engines, boilers, tackle, apparel, and furniture, wheresoever the same may be found; and that said process also be against said John Doe, master of the said steamboat, and that he may be arrested and held to bail herein until he give stipulations as provided by the rule of the Supreme Court of the United States, and of this Honorable Court; and that said writ also contain a clause that if he cannot be found, that then the Marshal attach the goods and chattels of the defendant in his district to the amount sued for; and in case no such property can be found, that then the Marshal attach the credits and effects in the hands of his to the amount sued for, to compel the appearance of the defendant; and in default of such appearance to answer the decree herein, and that the said defendant, and all persons having or pretending to have any right, title, or interest in said steamboat, her engines, tackle, &c., may be cited to appear and answer all and singular the matters hereinbefore so articulately propounded and set forth; and this honorable Court would be pleased to pronounce for the libellant for the damages aforesaid, and for such other or different relief to the libellant in the premises as shall to law and justice appertain, and also to condemn the said steamboat New York, her engines, boiler, tackle, apparel, and furniture, and the parties intervening for their interest therein, and also the said defendant in costs.

WM. R. BEEBE,
Pr. for Lib't.

C. DONOHUE,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this day of November, A. D. 1850, before me, the subscriber, a Commissioner duly appointed, &c., personally came and appeared , who signed the foregoing libel as agent of the libellant therein named; and said being by me duly sworn, did depose and say, that he was the master of the ship or vessel therein referred to; that he was personally acquainted with all the facts relative to said collision, and the matters stated in the libel in reference thereto; that he has heard the foregoing libel of complaint by him so subscribed read; that he knew the contents thereof; that the same was true, of his own knowledge, except as to those matters and things therein stated to be on his information and belief, and as to the matters and things so therein stated, he verily believes the same to be true; and said did further depose and say, that the libellant was and is absent from the Southern District of New York, and out of the United States, and more than one hundred miles

from the District; that he, the said deponent, was fully authorized to swear to and file said libel on behalf of the libellant.

GEO. W. MORTON,
U. S. Com'r.

DISTRICT COURT OF THE UNITED STATES,
Southern District of New York:

Filed the ninth day of Nov. 1850.

Stipulation for Libellant's Costs.

Entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed in this Court on the ninth day of November, one thousand eight hundred and fifty, by Isaac P. Ree, against the steamboat New York, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamboat may be condemned and sold to pay the demands of the libellant; and the said libellant and Andrew F. Meincke, surety parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant, or his surety, execution may issue against his goods, chattels, and lands for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this Court, or in case of appeal by the Appellate Court.

J. P. REE,
By J. F. KALLESEN,
A. F. MEINCKE.

Taken and acknowledged this 9th day of November, 1853, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

Andrew F. Meincke, party to the above stipulation, being duly sworn, doth depose and say, that he resides at No. 12 State Street, in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. F. MEINCKE.

Sworn to this 9th day of November, 1850, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

The President of the United States of America, to the Marshal of the Southern District of New York, greeting:

Whereas, a libel hath been filed in the District Court of the United States for the Southern District of New York, on the ninth day of November, in the year of our Lord one thousand eight hundred and fifty, by Isaac P. Ree against the Steamboat New York, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Southern District of New York, on the twenty-sixth day of November, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf: And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, Judge of the said Court, at the city of New York, in the Southern District of New York, this ninth day of November, in the year of our Lord one thousand eight hundred and fifty, and of our Independence the seventy-fifth.

J. W. METCALF,
Clerk.

W. R. BEEBE,
Proctor for Libellant.

In obedience to the within monition, I attached the steamer New York, her tackle, &c., therein described, on the 11th day of Nov. 1850, and have not given due notice to all persons claiming the same, that this Court will on the 26th day of Nov. inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

H. F. TALLMADGE,
U. S. Marshal.

Dated 26th Nov. 1850.

Bond under Act of Congress, 11th Nov. 1850.

UNITED STATES DISTRICT COURT,
Southern District of New York:

ISAAC P. REE
vs.
THE STEAMBOAT NEW YORK, her tackle, &c.

Monition ret'ble Nov. 26th, 1850.

W. R. BEEBE,
Proctor for Libellant.

I hereby depute Lorenzo De Angelis to execute the within process. Dated 9th Nov. 1850.

H. F. TALLMADGE,
U. S. Marshal.

Filed Nov. 26, 1850.

U. S. DISTRICT COURT,
Southern District of New York:

In Admiralty.

ISAAC P. REE, Lib't.
vs.
STEAMBOAT NEW YORK, &c.

Southern District of New York, ss:

Thomas C. Durant, being duly sworn, deposes and says that he is the agent for the true and *bona fide* owners of the said boat, and he is duly authorized by the said owners to claim the said steamboat.

THOMAS C. DURANT.

Sworn before me this 11th day of November, 1850.

GEO. W. MORTON,
U. S. Com'r.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
for the Southern District of New York:

ISAAC P. REE
vs.
THE STEAMBOAT NEW YORK.

Bond to the Marshal, under the Act of Congress of March 3d, 1847.

Know all men by these presents, that we, Thomas C. Durand and are held and firmly bound unto Henry F. Talmadge, Marshal of the United States for the Southern District of New York, in the sum of ten thousand dollars, to be paid to the said Henry F. Talmadge; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs,

executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the eleventh day of November, in the year of our Lord one thousand eight hundred and fifty.

Whereas a libel has been filed in the District Court of the United States for the Southern District of New York, on the ninth day of November, in the year of our Lord one thousand eight hundred and fifty, by Isaac P. Ree, libellant, against the steamboat New York, for the sum of five thousand dollars, on which process of attachment has issued; and the said Steamboat New York is in custody of the Marshal under the said attachment, and Thomas C. Durand has applied for a discharge of said steamboat New York from the custody of the Marshal, and has filed a claim claiming the said steamboat New York as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said Court: Now, therefore, the condition of this obligation is such that if the above bounden Thomas C. Durand and shall abide by and answer the decree of this Court, then this obligation shall be void; otherwise the same will be and remain in full force and virtue.

THOS. C. DURANT.
M. H. GRINNELL.

Sealed and delivered, and taken and acknowledged, this 11th day of November, 1850, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas C. Durant and being duly sworn, deposes and says, and each for himself saith, that he is worth the sum of ten thousand dollars over and above all his just debts and liabilities.

THOMAS C. DURAND.
M. H. GRINNELL.

Sworn to this 11th day of Nov. A. D. 1850, before me,

GEO. W. MORTON,
U. S. Com'r.

I approve of the sufficiency of the sureties to the within bond.
Dated this 11th day of Nov., 1850.

ANDREW T. JUDSON.

Filed 11th day of Nov'r, 1850.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on the twenty-sixth day of November,

in the year of our Lord one thousand eight hundred and fifty: Present, the Honorable Samuel R. Betts, District Judge:

ISAAC P. REE
vs.
THE STEAMBOAT NEW YORK, her tackle, &c.

On motion of W. Beebe, proctor for the libellant, the Marshal returns on the monition issued in the above cause, that he had attached the said vessel, her tackle, &c., but had not given due notice.

On like motion the claimants are called. Mr. Haskett appears for the claimants, and moves for ten days to file and perfect his answer, which is granted, and also permission is given to notice for the next term.

In Admiralty.

UNITED STATES OF AMERICA,
Southern District of New York:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States in and for the Southern District of New York.

The answer of Charles W. Durant, Septimus Lathrop, and Thomas C. Durant, sole owners of the American vessel known and called the Steamboat New York, her tackle, apparel, and furniture, to the libel and complaint of Isaac Rea, owner of the ship, brig, or vessel called the Sarah Johanna; and thereupon the claimants allege and articularly propound as follows, to wit:—

First. Answering the first article of said libel, these claimants say, they admit this an action civil and maritime; and admit that at the time of filing said libel, the said steamboat, her tackle, apparel, and furniture, were within this district, but as to the other allegations therein contained these claimants cannot say.

Second. These claimants, answering the second article of this libel, say, that they have no knowledge, save by the said libel, as to the ownership of said brig or vessel "Sarah Johanna," or as to the tonnage of said vessel, but admit that at the time of said collision said brig or vessel was in the port of New York on a voyage bound to sea.

Third. These claimants, further answering the third article of this libel, say, that they are entirely ignorant of the matters alleged in the third article of this libel.

Fourth. And these claimants, answering the fourth article of this libel, say, they have no knowledge of the said vessel Sarah Johanna having taken on board ballast, being ready to undertake voyage, on what voyage she was bound, for what voyage she was chartered, what was her cargo, or whether or not she had taken on board a pilot. And these claimants admit, that on the night of the fifth of November she was lying in the stream at anchor, but they deny that the place where she was anchored was at a safe and proper distance

from the shore on either side, and nearest the New Jersey shore, and these claimants deny that she had a watch duly set on board.

Fifth. And these claimants answering, say, that they admit the wind had freshened considerably at half past three o'clock, on the morning of the sixth of November, but they have no knowledge of any other matter alleged in the fifth article of this libel.

Sixth. And these claimants, further answering, deny the several allegations contained in the sixth article of this libel; and in particular, they deny the allegation that they negligently and unskilfully ran foul of the said vessel "Sarah Johanna," and aver that, on the night of the said fifth of November, the wind being fresh from the north, and the tide ebbing strongly, they were pursuing their usual and proper course down the river with the said steamboat "New York," having several boats in tow, one Murray being in command thereof, and about half past three o'clock in the morning of the said sixth of November, they discovered a vessel, said to be the Sarah Johanna, close under the bows of said steamboat; that the said Murray immediately ordered the helm of the said steamer, and the helms of the several boats in tow, to be put to starboard, which order was promptly obeyed, and the said several helms put to starboard, and at the same time the said steamer and the boats in tow were stopped and backed as much as possible; but being so near where the vessel said to be the "Sarah Johanna" was first discovered, it was impossible to avoid a collision, and a collision ensued, the second boat on the starboard side striking the larboard bow of the vessel said to be the "Sarah Johanna;" and these claimants aver that this collision took place wholly in consequence of there being no good and sufficient light on board the vessel said to be the "Sarah Johanna;" but of the nature and extent of the injury to the said "Sarah Johanna," as alleged in the sixth article, this claimant has no knowledge.

Seventh. And these claimants, further answering, deny that said collision is imputable to the cause alleged and set forth in the seventh article of this libel, and aver that it was imputable to the fault of the officers and crew of the vessel said to be the "Sarah Johanna," and occurred in consequence of the darkness of the night and the want of a good and sufficient light on board said "Sarah Johanna;" and these claimants aver that the night was very dark, and there was no good and sufficient light shown in some part of her rigging, at least twenty feet above her deck, and from her taffrail, according to the provisions of the statute in such case made and provided; and these claimants aver that the officers and crew of the said steamboat, and of the boats in tow, did all in their power to avoid said collision, and took proper care and precaution, and navigated and directed the said steamboat and the boats in tow in a proper and prudent manner.

Eighth. And these claimants, further answering, say that they have no knowledge of the matters alleged in the eighth, ninth, tenth, and eleventh articles of this libel, and leave the libellant to make proof thereof as he may be advised.

Ninth. And these claimants, in drawing the several allegations of the libel, and in the averments herein made, do the same upon information and belief, believing the same to be true.

Wherefore, they pray that the said libel may be dismissed, and costs decreed to them.

C. W. DURANT,
Pr. T. C. DURANT.
WM. JAY HASKETT,
SEPTIMUS LATHROP,
Pr. T. C. DURANT,
Proctor for Claimants.
THOS. C. DURANT.
J. F. MALCOLM,
Advocate.

Southern District of New York, ss:

Thomas C. Durant, one of the owners of said boat, being duly sworn, deposes and says that he is the authorized agent of the above claimants; that the said Charles C. Durant and Septimus Larthrop are owners of said boat with this deponent; are out of this district, and more than one hundred miles from the city, and that he has read the within answer, and the same is true, according to his information and belief, and that he believes the same to be true.

THOMAS C. DURANT.

Sworn to before me, this 13th day of February, 1851, before me.
JOSEPH BRIDGHAM,
U. S. Com'r.

Filed 21st January, 1852.

ISAAC P. REE
vs.
THE STEAMBOAT NEW YORK, her tackle, &c. } 8,504.

ALEXANDER W. PALMER
vs.
THE BRIG SARAH JOHANNA. } 8,502.

PLINY A. MOORE
vs.
THE SAME. } 8,501.

These causes being called in their order on the calendar, on motion of Messrs. Betts & Donohue, and William J. Haskett, the proctors for the libellants and claimants, it is ordered that the three causes be heard at the same time.

Evidence for the Libellants.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this sixteenth day of November, in the year of our Lord one thousand eight hundred and fifty, I, George W.

Morton, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States Courts, new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Diederick Cornelius Diedrichssen, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, in the district aforesaid, wherein Pliny A. Moore and John B. Tibbets are libellants against the brig Sarah Johanna, her tackle, &c.: And the said D. Cornelius Diedrichssen being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said D. Cornelius Diedrichssen, and he did thereupon depose, testify, and say as follows, viz:—

The witness being unacquainted with the English language, Ludwich Christian Dahlstrom is sworn as interpreter: and being examined by Mr. Haskett as to his interest in this suit, he says he is in the employ of Messrs. and Mienke, at a salary that does not arise from any interest he has in their concerns. I came at the request of Mr. Mienke. I have spoken with Mr. Donohue in relation to this suit. I have asked the witness several questions, at the request of Mr. Donohue, and have translated the answers of the witness for Mr. Donohue. I have not been told what facts are necessary to be proven in this case. I am acquainted with the case, and know what is expected to be proved in this case. I have not examined the crew. Have you examined the mate? I have not; but I have asked the mate the questions Mr. Donohue requested me to ask him. I put the questions to the witness in this room a few minutes since; Mr. Meinke is the Danish counsel here (being asked as to that fact by Mr. Donohue).

The Commissioner overrules the exceptions taken to the competency of the interpreter to act in that capacity.

The witness being asked by the interpreter if he knows the brig Sarah Johanna, he says he does. J. H. Callston was master; witness was on board on the 4th of November, and has been since that time; the vessel was at pier 11, North River, on that day; she was bound to Buenos Ayres, to stop at Charleston; she left the pier on

the 5th of November, in the forenoon; she went out in the stream, about the middle, but nearer New Jersey; she was taken out and anchored there, under the direction of the pilot; the pilot went out in her when she was anchored; I went below that evening, about half past 9; before going below I pumped the ship, and hung out the lantern on the larboard foretack; it was where it would be seen from vessels coming down the river; I next came on deck about half past two; the watch on deck was then on deck; only one man; all hands afterwards came on deck at three o'clock; this was about an hour and a half before the collision; I saw the lantern burning before the collision; the captain hauled the lantern down, and used it to look in paying out chain, and after that hoisted it up again; this was about an hour before the collision: there was a collision occured that night; the first I saw was a steamer ahead of us; we then paid out chain, because we saw the steamer coming right for our bow, in order to get clear of her; that was the second time we paid out chain that night; we paid out about 20 fathom; the steamer went outside of us, and two of the canal boats that she was towing came on our larboard bow; these boats were attached to the steamboat; they stove our bow in and the timbers of the vessel; the brig made a great deal of water, and they had to pump the ship after the collision, to keep her afloat; there was a very hard wind from the northwest at this time; the tide was running down; it was the steamboat New York; the steamboat was about once and a half her length off when I first saw her; I saw the light up after the steamboat ran into us; the brig was tight before the collision; we could have done nothing to keep out of the way of the steamboat.

On his cross-examination. I live in the small island of Salt, in the North Sea, when at home—not in the same island with the captain; the captain is no relation to me. I shipped at Altona; I have been two years in the captain's employ; I am bound to stay by the brig until the arrival of the brig at Altona. The pilot anchored us in the stream about 11 in the forenoon; we had only the larboard anchor out. The first time we cast anchor we had 35 fathom of cable out; the captain afterwards paid out about 30 fathom, and the last, all that we had left of 90 fathoms; there was no man at the wheel when I came on deck at ½ past two; there was no one at the wheel at the time of the collision. The brig draws 10¼ feet water; she was in heavy ballast; she had all her topgallant-mast up; her topgallant yards were crossed; her jib-boom was rigged out; she had jib and staysail; the crew paid out the chain the last time I gave the orders. I stood before the windlass, on the larboard side; I could see the steam vessel at the time she was about the length of the ship ahead; the wind was blowing hard from the N. West at the time. The steamboat went on the N. York side of us, and two of the canal boats on the N. Jersey side of us. The captain just came upon deck at the time of the collision; the captain was on deck at the time of the collision. What are the names of the men that were on deck at the time of the collision? S. Schwenerer, 2 mate; F. Mailand, T. Jur-

gensen, J. Richlaffer, S. F. Jensen, myself, and the captain; the reason of their being all on deck was, that they had not gone below after paying out the chain. We had a lantern when we were paying out chain; we did not take down the lantern for that purpose, but took the binnacle lantern. There is but little difference between the rig of our vessel and an American vessel; the larboard foretack runs to a block on the cathead; the light was suspended 17½ feet above the deck. I know that is the height, as the captain gave me orders the next day to measure it; the block through which the larboard foretack leads, hangs below, near the middle of the foreyard, about two feet. The lantern was a round lantern, long shape; the oil used in the lantern was oil that was purchased here; the lantern was burning at and after the collision, and until daylight, about six o'clock. I took the lantern down; the lantern was clean when I took it down; it was clear and burning when I took it down. The lamps was not trimmed by me after I put it up; I did not see the carpenter man trim the lamp that night. The brig took the chain readily when it was paid out; she paid off to the eastward; at that time there was no man at the wheel; the rest of the crew were below, except the names I have given. I don't know how far below the block the lamp hung; I did not measure up to the block; there was a piece of canvas or to the foretack, to which the lamp was hung, and I measured to that; I measured from the deck to the lamp, in a straight line; the second mate had the first watch; from 8 to 9; they had watch and watch that night. Thomas Jensen was on deck when I came on deck, about ½ past two; he was the only man on deck at that time.

On further direct. Why did you pay out the chain the first time? On account of the wind blowing harder. The steamboat had two barges on one side, and I cannot say how many on the other; the forecastle was driven in by the collision.

On further cross. The rest of the crew came on deck after the collision; they slept in the forecastle.

DIEDRICH C. DIEDRICHSEN.

Read to and subscribed by the witness on his examination before me, Nov. 16, 1850.

GEO. W. MORTON,
U. S. Com'r.

D. C. DIEDRICHSSEN, 1 mate.
P. S. SCHWENERER, 2 do.
F. MAILAND,
T. JURGENSEN,
J. RICHLAFFER,
S. F. JENSEN.

November 20th, 1850.

Diedrich C. Diedrichssen being recalled and further examined: Did you hail the steamboat before she ran into you? (Ob. to.) I did. Did

any one else hail her? No. What did you say? "Dampee ahoy!" I did not observe any attention paid to my hail.

DIEDRICH CON. DIEDRICHSSEN.

UNITED STATES OF AMERICA,

Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this eighteenth day of November in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Peter S. Svarran, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein Pleny A. Moore *et al.* are libellants against the Sarah Johanna.

And the said Peter S. Svarran being about the age of twenty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Peter S. Svarran, and he did thereupon depose, testify, and say as follows, viz:—

That he is a seafaring man and is going to sea as soon as the ship is ready: he knows the Sarah Johanna, and was second mate when the collision with the barges in tow of the Steamboat New York took place. The brig was anchored in the middle of the North River, opposite the city; they were anchored there in the forenoon of the fifth of November by the pilot. I continued on board that night; the collision took place between 4 and 5 in the morning. I was on deck at the time of the collision, and had been there about half an hour. I saw the lantern up and it was lighted. The lantern was hung on the foretack, but cannot say how high from the deck. I do not know when the lantern was taken down. The lamp was burning when I came on deck about 4 o'clock in the morning. I saw it burning from that time until daylight. I first saw the boat

that ran into us right ahead of us. I saw the steamboat more than two ship's lengths off. They were coming right in for us. The tide was ebb. The wind northwest. When they saw the steamboat coming, they paid out chain about 20 or 30 fathom.

Adjourned until 10 A. M. to-morrow.

November 19*th*, 1850. The parties being present, the examination of the witness is resumed. He says they could not have done anything to have avoided the collision except what they did. I don't know how many vessels of the tow went outside of us. They ran into us on our larbord bow.

On his cross-examination. I have been with this vessel for 14 months and are bound to stay by her until we arrive at a port in the Baltic. At the time they paid out the chain the vessel went right astern, and not toward the New York shore. We had the larboard anchor out. The wind blew hard at the time; we had a round lantern hung up. It was a glass lantern; the lantern was about two feet long, and 8 or 10 inches diameter inside; it had two wicks. The first mate trimmed the lamps; there were six men on deck when the vessels came together; there were no other persons on deck except the six mentioned in the paper; the next morning I saw the seizing on the foretack to which the lantern was suspended; it was more than half way from the cathead up to where the lantern was hung; I cannot say how much more; I think the seizing was 5 or 6 feet below the foreyard, but I cannot say with any certainty; the vessel did not sheer off from the wind; I did not tell Johnson or any other man next morning that there was no light burning.

The lamp in the lantern continued to burn clear until daylight. Could you see the lamp burning clear in that lantern from the stern of your vessel? I could.

On further direct. The captain was on deck before the collision, but I don't know whether he was at the time of the collision.

PETER S. SVARRAN.

UNITED STATES OF AMERICA:

Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the Act en-

titled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Johan T. Mayland, to testify and the truth to say on the part and behalf of the in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, in the district aforesaid, wherein Pleny A. Moore and John B. Tibbetts are libellants, against the brig Sarah Johanna.

And the said Johann T. Mayland being about the age of twenty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John T. Mayland, and he did thereupon depose, testify, and say as follows, viz:—

That he is one of the crew of the Sarah Johanna, and was on board when she started to go to sea, of the 5th of this month; she left that dock about 3 o'clock; she was taken out by the pilot; she was anchored in the stream by orders of the pilot; I was on board during the night; I went below that night at 8 o'clock; there was a lantern up when I went below; it was hanging in the foretack; it was so that it could be seen from ahead; I came on deck at 3 o'clock in the morning, about an hour before the collision; the light was burning in the lantern when I came on deck, and was burning when I went below again after the collision; I was on deck at the time of the collision; the steamboat, with her barges, were right ahead of our brig; when I first saw them they were coming right down towards the brig; when we saw them coming down upon us we paid out some chain; the tide was ebb. Did you do all you could to prevent the collision? We did.

On his cross-examination. I am bound to return in the brig. Did the captain tell you to come here to swear there was a light burning? He did. I cannot say how far below the yard the lantern hung, I should think, about eight feet below the yard; it was more than half way from the deck to the foreyard, where it hung. Are you certain you saw that lamp burning after the collision? I am; how long after I cannot say, as I went below: they did not commence paying out chain immediately on seeing the steamer; the chain was paid out rapidly; I did not observe whether the wind drove her over to the New York shore, while the chain was paying out; the wind blew a gale at the time; it was dark. Could you see the lantern clear from the stern of the vessel? I could.

JOHANN T. MAYLAND.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty, I, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, James Peter Jurgensen to testify and the truth to say on the part and behalf or the claimants in a certain suit or matter of controversy now depending and undetermined, in the District Court of the United States, for the Southern District of New York, at the city of New York, in the District aforesaid, wherein Pleny A. Moore and John B. Tibbetts are libellants against the brig Sarah Johanna, her tackle, &c.

And the said James Peter Jurgensen, being about the age of nineteen years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Peter Jurgensen, and he did thereupon depose, testify, and say as follows, viz:—

That he is one of the crew of the brig Sarah Johanna, and was on deck at the time of the collision; I first saw the steamboat right ahead of us; the steamboat was heading a little to our starboard; when we saw the steamboat coming, we paid out some chain; the chief mate hailed the steamboat when he saw her coming; she was then about 1½ the brig's length off.

On his cross-examination. The chain was paid out rapidly.

JAS. PETER JURGENSEN.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this nineteenth day of November, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner duly appointed by the Circuit Court of

the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act, in addition to an Act entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Loren T. Jensen, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States for the Southern District of New York, in the city of New York, in the District aforesaid, wherein Pleny A. Moore and John B. Tibbetts are libellants, against the brig Sarah Johanna, her tackle, &c.

And the said Loren T. Jensen being about the age of eighteen years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Loren T. Jensen, and he did thereupon depose, testify, and say as follows, viz:—

That he one of the crew of the Sarah Johanna; that he was on board the night the vessel lay out in the stream. He went below at 8 o'clock; there was no light up when I went below. I came up on deck again at 2 o'clock. There was a light up then. I was on deck when the collision occurred; the light was then up. I saw the light up after the collision. When I first saw the vessel that ran into us, they were right ahead of our brig. I don't know how many boats there were, some six or seven; the vessels were running down the river. They paid out chain when they saw the steamboat coming. The captain and chief mate hailed the steamboat.

On his Cross-examination.—I was standing before the windlass when I first saw the steamboat. We were paying out chain when the boat ran into us. I stood too far from the mate when he hailed to understand what he said when he hailed. I am bound to stay by the ship till we get to Altona. Did the Captain tell you you must come here and swear that there was a lantern burning? He did not. They have two lanterns on board, it was the *large lantern that was hung up.* I saw the seizing on the *foretack*, it hung up higher than *half way between* the cathead and foretack. It was not hung 8 feet below the foreyard. The light in the lantern was about half way between the cathead and foreyard.

LOREN THOS. JENSEN.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twentieth day of November, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Lane Lovenson, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein Pleny A. Moore and John B. Tibbetts against the brig Sarah Johanna.

And the said Lane Lovenson, being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said L. Lovenson, and he did thereupon depose, testify, and say as follows, viz:—

That he was the carpenter on board the brig Sarah Johanna at the time of the collision. The vessel lay in the stream abreast of the pier, and was anchored there by direction of the pilot. I went below at 8 o'clock, and came on deck again about 3 o'clock. The collision took place about 4. I saw the light hanging on the foretack when I came on deck. I went below before the collision. I was below when the steamboat run into us by the collision. The barge broke 5 timbers, planks, and ceiling inside and out, and close to the water edge. I came on deck after the collision, and then saw the lantern burning.

On his Cross-examination.—What called your attention to the lantern? To see if it burned well. It hung about 8 feet below the foreyard, as far as I can judge. How do you know the barges struck the brig? I saw her lying at the bow. The barges lay at the bow for about half an hour after the collision. I came on deck directly as the vessel struck us. I am bound to remain with the vessel until she returns to Denmark. I have the most of my wages still due.

LANE LOVENSON.

UNITED STATES OF AMERICA:

Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twentieth day of November, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, N. L. Richelson, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein Pleny A. Moore and John B. Tibbetts against the brig "Sarah Johanna."

And the said N. L. Richelson, being about the age of eighteen years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said N. L. Richelson, and he did thereupon depose, testify, and say as follows, viz:—

That he was one of the crew of the Sarah Johanna when the collision occurred, and was going to sea in her. The vessel was laying at pier 11 on the morning of fifth of November; from there she went out in the stream. The pilot anchored her out there. I went below about 8 that night, and came on deck again at 12 at night, and remained on deck till one. I was on deck at the time of the collision; there was a light up at the time. It was hung at the foretack. The lamp was burning at the time of the collision. I don't know how long after it continued burning, as I was ordered below to trim the ballast. I first saw the steamboat right ahead of us about 1½ ship's length off. We paid out chain when we saw the steamboat coming; I don't know how the tide was. The chief mate and captain hailed the steamboat. I cannot exactly tell what they said. I went below to trim the ballast, that the ship should not make any more water. The water came down from above. Don't know if from the collision; the collision knocked our bow in.

On his cross-examination. It was dark, but not so dark but that we could see the steamer. I could see a man's face across the deck, but could not be certain to recognize him. I stood on the fore hatch when the vessels came together aft of the windlass abaft the foremast. What were the men doing one minute before the collision? Paying out the chain. I don't know where the captain stood. I saw the captain on deck at the time of the collision. Did you look at the lantern a few minutes before the collision, and see that it was burning? I did. How many times did you look at it? I don't know. Are you certain that you saw it once? I am. At the time you had the watch on deck between 12 and 1 o'clock? Yes. Did you look at the light at any other time and see it? No. I am bound to return in the ship to Altona. Have been on board 14 months. Are not the greater part of your wages due you? Yes.

On further direct. I was on deck when they first paid out chain. Had they a lamp the first time they paid out the chain? No.

NIS. L. RICHELSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act, entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing *deposition* is, and the fact is the *witnesses* are material and necessary in the cause in the caption of the said deposition named, and that *they* are seafaring men and bound on a voyage to sea, more than two miles from the city of New York.

I further certify that a notification of the time and place of taking the said *deposition*, signed by me, was made out and served on the proctor for the claimants to be present at the taking of the said *deposition*, and to put interrogatories, if he or they might think fit.

I further certify, that on the 16th, 18th, 19th and 20th days of November, in the year of our Lord one thousand eight hundred and fifty, I was attended by the proctors for the libellant and claimant, and by the *witness* who of sound mind and lawful age, and the *witnesses* were by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the *depositions* were by me reduced to writing, in the presence of the *witness*, and from their *statements*, and after carefully

reading the same to the *witnesses*, they subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of delivering the same with my own hand to the Court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this twentieth day of November, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fifth.

GEO. W. MORTON,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this tenth day of December, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, James B. Edwards, to testify and the truth to say on the part and behalf of the libellant in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the district aforesaid, wherein Pleny A. Moore and others are libellants, against the brig Sarah Johanna, her tackle, &c., Isaac P. Reay, claimant.

And the said James B. Edwards being about the age of twenty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James B. Edwards, and he did thereupon depose, testify, and say as follows, viz:—

That he is going to Dansville, Livingston County, more than 100 miles from the city of New York; that he was on board the steamboat New York, on the 6th of November last when the collision occurred; I had charge of the canal boat L. C. Woodruff, and went on board the New York about ten minutes before the collision; when I came on the steamboat for the purpose of getting something to drink, we saw that the steamboat was considerably bothered; they had just cleared a vessel lying in the river that had a light up; I stood alongside the pilot's room; I heard Captain Murray ask the pilot, calling him by name, if he saw that fellow lay there without any light on; I did not hear the pilot make him any answer; I saw the pilot put his wheel lead around, and I went to go in to help him; the door was fastened; Captain Murray then went back and ordered those on board the tow-boats to put their helm hard a starboard; I saw Mr. Murray go to the helm of the tow-boat; I hollowed to my man that I had on the watch, and told him to put his helm hard a starboard, and he did so; about that time the tow-boat struck the brig; I then went over on my boat; I looked at the brig before we struck her, and did not think we could clear her; it was quite dark; I could not tell exactly how far we were from the brig when I first saw her, but think probably about five rods. Why could you not see the brig more than five rods off? She had no light up. Had you passed any other vessel having lights? We had, I could have seen the lights along the docks if I had looked. Did the persons on board the steamboat make every exertion in their power to avoid the brig after they saw her? (Obj'td to.) I do not know any further than the pilot was concerned. What else could the pilot have done except what he did? he could not have done anything else than he did, could he? (Objected to.) I am not used to steamboating; he might have rung the bell to stop and slowed her, but if he had, I do not think it would have done any good, we was too close to him; we laid alongside of them about 10 minutes after the collision. Did you look then for a light? I did not; there was no light on the brig while I was on the steamboat. If there had been a light there, must you have seen it? (Objected to.) Yes, sir. Was there another vessel lying near by you? Yes, sir, to the eastward of us. What brought your attention to that vessel? My boat was on the outside, and the forward tier of boats, and I had to keep a bright lookout. Had that vessel to the eastward a light? Yes, sir; after we got clear of the brig, one of the boats sagged off, and came against this vessel which lay to the eastward of the brig; the name of the canal boat that struck this vessel to the eastward, was the A. A. Holly; it broke the Holly's railing; the vessel to the eastward also caught into a line boat.

On his cross-examination. I did not see any one on the bow, or forward on the steamboat; there might have been without my seeing them; I did not hear anything said by the captain or pilot to any one on the bow or forward part of the steamboat, nor did I hear any-

thing from the forward deck to the pilot; the pilot-house is on the upper deck, forward; I don't know how many boats there were on the first tier, starboard side, between us and the steamboat; but I think three, and I think about the same number on the other side of the steamboat; I got up forward of the guards, I think, and went to the starboard side of the wheel-house; I met Mr. Murray on the upper deck near the wheel-house, he was in quite a flusteration, moving one way and another; I did not see him go into the pilot-house; he was not there a great while before he spoke to the pilot about the vessel ahead without a light; I did not hear the pilot make any reply to the captain when he spoke about the vessel ahead without a light; I looked in the window where the pilot was, and saw what he did; I remained there until the tow-boat struck; I did not continue long looking what the pilot did; I have seen the barge Tibbetts; I believe she was on the larboard side of the steamboat; I do not know what became of her after this collision; I heard that she got loose from the tow, and made fast to the brig; we finally passed the brig to the eastward; I think it was the Langsford that got adrift; I cannot tell where the two brigs were lying; I don't know how far they were from New York, whether a half or a quarter of a mile: after speaking to the pilot, the captain went on board the barge; he first hollowed to the barges, and then went on board of one of them; he went on the same way I came off; I did not see any one at the helm of the barges when the captain went on board of them. Did you see Captain Murray when he got the barge's helm? I did; and saw him get hold of it. How long after he got there was it before the collision? I should not think it over 3 or 4 minutes, if it was that; there was only one barge on the starboard side in the first tier; she steered with a tiller; I think there was one barge on the larbord side beside the Tibbetts. The side on which your boat passed the brig, was it to the Jersey or New York side of the brig? On the York side of the brig, I believe. As you passed the brig Sarah Johanna, did you see any barges alongside of her? We did not pass her on our side, the steamboat passed between us and the brig; I believe there was no one in the pilot-house with the pilot as long as I was there; from where I was on the steamboat, I could see the man at the helm on my boat, and I could see which way he put his helm; it was pretty light at the stern of my boat; the barges all had loads. Were not the barges all deep in the water? I cannot tell I saw the barges; I have been engaged quite a number of years in barges. Can you not tell from seeing barges and canal boats, whether they are light or loaded heavy? I can. Did you see the barges and boats in tow? Yes, I believe I looked over one or two of them the day before. Were they light or heavy? I don't know how much they weighed. Did you see any person on either of the two boats next inside of you towards the steamboat as you came across them? Yes; the captain of the Oneida Chief came with me; I

went to bed about twelve that night; I believe I saw another man up on his boat.

On further direct. You say in your examination, we finally passed the brig to the eastward: by that, which side of the brig do you mean? I think we went on the York side. Do they weigh canal boats in Albany? I suppose they do when they are bound up.

JAMES B. EDWARDS.

Read to and subscribed by the witness on his examination before me, December 10th, 1850.

GEORGE W. MORTON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this eleventh day of December, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, James Pickett to testify and the truth to say on the part and behalf of the libellant in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the District aforesaid, wherein Pleny A. Moore and others are libellants, against the brig Sarah Johanna, her tackle, and Isaac P. Ray, claimant.

And the said James Pickett being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Pickett, and he did thereupon depose, testify, and say as follows, viz:—

That he is going to Albany this afternoon. I was on board the Pequod when the collision occurred; I came on deck at 12 o'clock; the collision happened about daylight; I stood on the bow of the Pequod when the boats came together; I could not tell how far the

brig was off; it was dark, and I did not see her until we got close up to her. What first drew your attention to the brig? To look out for myself as quick as she struck. I did not see her until we came up to her; I could not tell whether my boat struck against the brig, but as soon as the boats came together I jumped out of our boat on board the brig; I had a running line in my hand, and made it fast to the windlass-bits of the brig; no one was on the deck of the brig at the time. Before your vessels came together, did you see a light on board the brig? I did not. When you made your line were any persons near the windlass? No, sir. When did you see the first light on board the brig? When they came up out of the forecastle. After you made your line fast, where did you go? I went on board my own boat. Where did you then drop your boat? I could not get a turn on the line, and I let about fifty feet run. What part of the brig did that bring your boat to? Right under her stern. Did you see any vessel that night that had lights up? I disremember. Do you remember any vessel that lay in shore of the brig? There were so many vessels around, that I paid no attention to any vessels at all. If this brig into which you run had a light, must you necessarily have seen that light? (Object'd to.) Yes, sir.

On his cross-examination.—The steamboat New York was on the starboard side of our boat; the Tibbetts, of Troy, was on the same side; I don't know the L. C. Woodruff; my boat was on first tier of boats on the starboard side; we were the outside boat, first tier; two barges inside of us, on the same side; neither of them was the L. C. Woodruff; I heard no hail or anything said from the steamboat; I was on deck, looking towards the shore; there was no one up on my boat except myself; I saw the Captain of the Tibbetts on the boat inside of us; he was at the cabin; I could not see what he was doing. He was sitting on the cabin; the cabin is at the stern; there was no one at all on board the brig when I first came on board, and no one the deck until they came up out of the forecastle; we were not hailed by the steamboat before running into the brig; I was the only person up on our boat, the rest were asleep; the captain of the Tibbetts was the only person upon that boat until after we struck; I could see the stern of the other boat, and there was no one there; I could hear the wheels of the steamboat working; they continued to work until we struck, but I think they slowed a little; I was very much alarmed when I found that we were running into the brig; I jumped without very well knowing what I was after; I made my line fast as quick as I could, and jumped back to my own boat again as quick as I could. Was you not about making preparations for dropping off from the tow? I was not. I was not considering about dropping off. I was not looking at or doing anything except looking around, and at the shore, and before me.

On further direct.—Had but two men on board our boat, Captain

and me; the Captain, I guess, was at the wheel. Did you look at the brig in her rigging to see if she had a light? (Object'd to.) Of course I did before I came to the brig. Then did you see a light before you struck her? (Object'd to.) No, sir.

On further cross.—Where did your boat strike the brig? On the starboard side, it was just about the fore-rigging that we struck her; I jumped on board near the brig's forward rigging; we were right on to the brig before I saw her at all; when I saw the brig, I only picked up the line, and prepared to jump aboard.

his
JAMES × PICKETT.
mark.

Read and subscribed by the witness James Pickett, on his examination before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they are all going more than one hundred miles from the city of New York.

I further certify, that a notification of the time and place of taking the said deposition signed by me, was made out and served on the proctor for the claimants, to be present at the taking of the deposition and to put interrogatories if he or they might think fit.

I further certify, that on the 10th and 11th days of December, A. D. 1850, I was attended by the proctors for the respective parties, and by the witness who of sound and lawful age; and the witnesses were by me carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing, in the presence of the witnesses, and from this statement, and after carefully reading the same to the witnesses, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of

delivering the same with my own hand to the Court for which the same were taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this eleventh day of December, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fifth.

GEO. W. MORTON,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this fifth day of December, in the year of our Lord one thousand eight hundred and fifty, I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the City of New York, in the said Southern District of New York, in the State aforesaid, Jorgen H. Callison, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, at the city of New York, in the district aforesaid, wherein Pleny A. Moore and John B. Tibbetts are libellants against the brig Sarah Johanna.

And the said Jorgen H. Callison being about the age of forty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Jorgen H. Callison, and he did thereupon depose, testify, and say as follows, viz:—

That he is bound on a voyage to sea, to sail to-morrow if the wind and weather permits. That he is now master of the Sarah Johanna, and has been for the last four years. (Mr. Haskett objects to the examination of the witness on the ground that he was master of the

brig and on board at the time of the collision.) The vessel lay at Pier 11 North River before she went in the stream, and was bound to Charleston, and thence to Buenos Ayres; she was under a charter at the time; she went in the stream on the 6th of November; she was anchored under direction of the pilot; she went to her anchorage in charge of the pilot; she was at anchor abreast of the pier, nearer to the Jersey shore; I went below at nine o'clock in the evening; before going below a lantern was lighted and hung up in the foretack; it was 17½ feet from the deck; I know that, because the mate and myself measured the distance from the deck; the foretack went from the cathead up to about two feet from the middle of the foreyard; after going below at about nine, I again came on deck about 3 in the morning, perhaps a little before; the light was then up and burning; I then called all hands on deck to pay out chain; it was blowing very hard; I took the lantern down from the foretack to see to pay out the chain; after paying out the chain, I put oil in the lamp and trimmed it and hung it up again on the foretack, the same place it was before; I first saw the steamboat and barges at about a quarter to four; they were about 120 to 130 fathoms off when I first saw them; I laid our helm a starboard, and paid out the rest of the chain; I cried out Steamer ahoy, and the mate called out Dampo ahoy; one of the canal boats attached to the steamboat ran into us and struck us on the larboard bow, about six inches above the water line; the blow stove in six timbers, two timbers called the bow bunt, eight streaks of planks outside, and seven inside; they were stove right into the forecastle; the same morning about eight o'clock we came back to the wharf; she was towed back by a steamer; they came in between pier 9 and 10; two gentlemen from the Insurance Company and Mr. Secor, the shipwright, examined the vessel; Mr. Secor made the repairs; the vessel is still here, and has been detained to undergo the repairs; the vessel has been on the dry dock; besides myself there are two mates and carpenter, and nine men before the mast; that includes cook; the crew have continued by the vessel, except one; I saw the lantern still burning after the collision.

On his cross-examination.—I am paid for my services on board by monthly wages; I have no share of the profits of the vessel; the crew on board some have been paid all the wages due them, and to some there is still wages due; I do not know whether the brig is insured or not; I have never known whether she was insured or not, since I have belonged to her; when I measured, I measured from the deck to the seizing to which the lantern was suspended; that was 17½ feet from the deck; there was a small thimble on the foretack through which a line passed, by which the lantern was hoisted up; the thimble was made fast to the foretack of the seizing; there was one and a half inch from the foretack to the thimble through which the cord passed; I was standing right behind the windlass when I saw the steamboat and barges; I paid out the chain before hailing;

I went aft and put the helm a starboard while the chain was paying out, and then came forward; there was about 20 fathoms of chain, all that remained paid out; the chain was all paid out when the steamboat came into us; the chain was not all paid out when he got to the wheel; the vessel has a wheel; it was blowing heavy at the time; the wind was about northwest; I do not know whether I shall return again to this port.

J. H. CALLISON.

Read and subscribed by the witness on his examination before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

THE BRIG SARAH JOHANNA
ag'st
PLINY A. MOORE and JOHN B. TIBBETTS.

I, George W. Morton, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit, under and by virtue of the Acts of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing *deposition* is, and the fact is the *witness* is material and necessary in the cause in the caption of the said deposition named, and that *he* is a seafaring man and bound on a voyage to sea of more than 100 miles from New York.

I further certify that a notification of the time and place of taking the said *deposition* signed by me was made out and served on the proctor for the libellant, to be present at the taking of the said *deposition* and to put interrogatories if he or they might think fit.

I further certify that on the fifth day of December, in the year of our Lord one thousand eight hundred and *fifty* , I was attended by the proctors for the libellant and claimant, and by the *witness*, who was of sound mind and lawful age, and the *witness* was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *deposition* was by me reduced to writing in the presence of the *witness*, and from his *statements*, and after carefully reading the same to the *witness*, he subscribed the same in my presence. I have retained

the said *deposition* in my possession for the purpose of delivering the same with my own hand to the Court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said *deposition* and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this fifth day of December, in the year of our Lord one thousand eight hundred and *fifty* , and of the Independence of the United States the *seventy-fifth.*

GEO. W. MORTON,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

Filed 12th day of January, 1852.

David Kelso (sworn).—Pilot by Sandy Hook; been 32 years in that employment; anchor vessels in North River, about half way across and sometimes further; that is customary distance; bad anchorage within 300 y'ds of New York.

Rocky bottom on N. Y. side; 250 yards off, soft bottom; mud in middle of river; anchorage is good, firm, middle of river; anchoring is good clean across; can carry 4 or 5 fathoms to Jersey dock.

Henry Rudd (sworn).—Pilot for 6 or 7 years; usual anchoring ground on North River is about middle of river when going to sea. This brig could not go to sea as well from the dock as from the middle of river; must have steamer to get away from the dock. It is usual course for vessels to go out into the river and anchor so as to get off to sea. The usual anchorage is about two-thirds of distance between New York and New Jersey.

Foreign vessels usually go out into the river to rig out their jib-booms, &c., which are rigged in at dock. It is almost impossible for a foreign vessel to go out to sea direct from the dock, because she lies with her spars also rigged in, and also ship has to be cleared up and crew got on board, where they can be kept.

Cornelius Regan (sworn).—Is shipwright, Nov'r, 1852, and for 18 years; repaired brig Sarah Johanna; she was broken 4 feet from stem on larboard bow; 6 plank broken through and two others started so as to be obliged to take them out; also took out 8 timbers forward cants, and about same number of streaks of ceiling; inside planking, outside planking, 3½ and 4 inches thick; bottom of timbers about 8 inches square, a trifle more; 2½ to 3 inch planking inside, rider about ten inches. Rider and breast-hook both broken; opening broken on larboard side 3 or 4 feet high and 18 to 20 inches wide; driven directly through. Vessel had first quality of Baltic oak, fully as good as any timber used here excepting live oak.

Defence.

Hart L. Murray (objected to because sued in *personam* in first suit).—Papers do not show any appearance by witness to suit; objection overruled.

Was master of steamer N. York at time of collision; invariable course, after getting to 29th St., is to go angularly across the river so as to run between vessels at anchor below by aid of their lights, and keep down until a sufficient opening is discovered to go through the anchored vessels.

That night stood off about one-third across the river; started off at 19th St. on angle of 45°; discovered an opening and ran down, passing a number of lights on each side; they had good lights; the night was dark and could perceive the lights plainly below 19th St.; passed a vessel very near this vessel, on his starboard side; that vessel had a light which he saw very plainly; passed her about 5 rods off.

A good many vessels in that vicinity—saw 20 or 30 lights probably.

Witness was standing on larboard side of wheel-house, on part of upper decks, most eligible place to observe, and watching eagerly the opening boat was then in, and suddenly discovered a black spot—this brig—right under his bow—and instantly turned to pilot and asked him if he saw that vessel without a light up, and witness turned to pilot, and pilot said, starboard, and instantly threw his wheel over. Witness passed the order to tow-boats on larboard side; did not then keep his eye on the brig; as witness turned, pilot rung to *slow, stop, and back.* The engine backed one or two revolutions before striking; ebb was strong tide, and N. W. wind; looked at vessel after striking; no light was up that he saw; should necessarily have seen a light under her fore yard 17½ feet from the deck; heard no hail from brig; saw a vessel on larboard side of opening (east side) with a light, about 100 fathom from the brig; also saw one 100 fathom west of brig, and had just passed one above same side. One on east side of him was very near, about 30 feet off, and the ferry about 300 fathom brig; thinks steamer had 11 vessels in tow; he was about 500 fathoms from brig when he first discovered her; he could see her 300 fathoms off that night.

Could have done nothing more to stop his vessel; everything was done, and promptly. If brig had had a sufficient light, he should have seen her and not gone into the opening; saw every vessel with a light a mile before coming up to them. From 15 to 25 tow-boats usually arrive in N. Y. every night, brought by 3 steamers. Tow that night was a small one, easily managed by his boat; has towed down 40 at a time; 3 to 4 steamers go out every night from Albany; about same number get off in the evening.

One of canal boat captains stood alongside of witness when he first discovered the brig; another person also stood aside him. Witness spoke as soon as he ascertained it was a vessel without a light.

His average No. of tows is 20; that night the tows were about usually loaded—bows about 3 feet above the water. Steamer and her tows occupied about 300 feet in breadth, and 350 to 400 feet in length, and steamer 50 to 60 feet, projecting ahead of the tows; could not see helm of starboard tow, and had to step to side of his boat to see helm of tow on larboard side, and saw the helm when he gave order to "starboard," and man was then standing at her helm. Witness did not take the helm of any tow that night; supposes he came a mile after taking his offing at 19th St. before reaching opening, and ¼ to ½ of a mile before striking the brig. As soon as he got his opening, he straightened up and did not change again; only run a few minutes (say 15) before striking brig; probably running 8 knots; had passed other vessels on his larboard side before the one at opening, but did not go within 30 feet of them.

The opening he saw was not directly N. S., varied a little to N. N. W. to N. W. Witness run off S. W. to opening, and then changed to S. or S. E., directly with course of opening; does not know that steamer changed her course except in those two instances, until order was given to "starboard" to avoid brig; witness was on lookout; no person was stationed on deck as lookout; there were hands on deck.

Witness stood 14 or 15 feet above the water, and 60 from the bow; commanded a steamer in towing 20 years; out of the business two years before the spring of this summer. The New York could stop with an ordinary tow and in ordinary weather, probably in a few lengths; think that night could have stopped her within 10 or 15 lengths, but would be as much as steamer could have done with all her power, and then it would depend on way the tow-boats swung. The rear tows were not so fastened as to prevent their swinging, nor can it be done. The opening he saw extended off, out of his view; should think it 500 to 600 feet wide, and no vessels were nearer together across the opening than the two he passed; has been in the habit of noticing those openings—they afford the only means of investigating the harbor in the night.

Knows Capt. Edwards; he stood alongside of witness that night; does not know what he said; might be two minutes after he gave pilot notice of brig to his ringing his bell; rung the three immediately; did not stand by him or look at him, for had turned away to give order to larboard boat before bell rung.

Judges was length of steamer from brig when bell rung to back—might have been twice that distance; going 8 to 10 knots that night with tide and wind.

Spoke to pilot instantly on ascertaining it was a vessel ahead. When pilot ordered "starboard," witness instantly passed the order, supposing it possible to escape brig, but had no more than given order when bell rang; thinks when first discovered brig she was 3 times length of steamer off.

Run aft probably 40 feet; when heard bell ran towards bell.

Was taking his tow to East River, pier No. 2; was about ½ off;

had approached no nearer after taking his course down; should have held it parallel to city until rounding into East River.

Thursday, January 22. *Continued.*—Witness in explanation means that the vessel on his larboard quarter was 3 to 500 fathoms from the brig, and he thinks his steamer had passed that vessel when he first noticed the brig, and he means to say he was from 3 to 500 feet from the brig when he first saw her.

Has not talked with any person, not his counsel, about this explanation, except to say he wished to explain to Court his statement about the distances.

Recollects he was asked yesterday by counsel whether he understood the difference between fathom and feet, and whether he meant fathoms, and he answered he did; can't say how far he had passed the vessel on his larboard when he first saw the brig, but had passed her; can't say he recollects the facts any better to-day than he did yesterday.

Daniel Salisbury (sworn).—Was 1st pilot of steamer that tow; thinks he came on deck and took the wheel below 19th Street, and sheered off westerly course, W. of S., and took lights of vessels ahead as his guide down, probably passed within 50 of vessels with lights up; cannot tell within 20 feet of distance; could see vessel with light 5 miles; could see the light at Narrows 15 miles off; does not remember passing over 3 or 4 vessels before striking; could see all the lights on the river; windows of pilot-house were open; thinks brig from 500 to 700 feet off when he first saw her; could only see a black spot, could not tell what it was; did not see any light on the brig when he hit her, or before; after she was struck, a person on her brought out a light; did not take his eye from her after first discovered until he struck her; she could not have a light hanging above her deck without its being seen by him; hove his wheel 2 or 3 times "starboard," which would put her helm about ½ over and stowed his boat; saw he was so near he could not clear her any way, and he stopped boat and backed her; made the three signals as quick as could be done; heard no hail from brig; not more than 30 to 50 feet from her when he began backing; don't recollect giving any order to the tow-boats; no one was in wheel-house with him; could have cleared the brig if she had showed a light; Capt. Murray stood on larboard side of wheel-house and spoke to witness; heard somebody ask what brig was doing there without a light.

That was usual course in which he came into the port; did not see brig sheer; saw other vessels below her with lights; after passing her, one west of her not far off, which he passed; dragged brig, after striking her, to westward, worked cleared of her and passed under stem of the other vessel lying to westward, and about 150 feet from where they left the brig; could distinctly see her light, it was above her deck; thinks he was heading a little to west of bow of brig when he first discovered her; don't know how long she lay in tide; witness was rather to eastward of brig, but heading to west of her; thought

his tow would pass her easiest to E., and started his helm "starboard" to do it; wind was straight down the river, a good breeze, and by compass, he thinks, rather east of N., ebb-tide on least ⅓ of its run; can't say how strong it was.

Had 3 tows on starboard side; middle one hit brig, and was injured some (owned by libellant, P. H. Moore), named George Tibbett, Jr.; steamer had her lights up, two on stem and one on flagstaff aft, globe lights.

All hands were on deck, are always called when boat goes into port; did not hear the call that night.

Forward lights were about 4 feet above his forward deck, and witness stood above main deck, 10 or 11 feet platform on which he stood 2 feet above upper deck.

Can put his helm completely round without assistance; remember seeing a vessel on larboard side, perhaps more than one before seeing the brig; thinks were passing one just about abreast of it when Capt. Murray spoke to witness, and he first saw brig.

Can't say which saw brig first; witness had just discovered her as Captain spoke; was heading ½ a point; thinks W. of Staten Island light when first saw brig; saw it just over his larboard bow; was heading something W. of S.: witness was called when he came on deck; it was not his watch, but it was his duty to be on deck in coming in that time of night; should not have been 2 hours later; was not called for anything specially; does not know of any difficulty or danger from any other vessel before or after he was called; boat was heading off to westward, not so much as S. W. when he came to wheel; witness sheered her off more to W. when he took the wheel, and kept so till he got into the opening; does not think he kept her off more than one point; straightened down 50 rods above vessel, abreast of which he first saw brig; the opening appeared perfectly clear and unobstructed; could not see where opening terminated; can change course of steamer quicker by having a man at helm of each tow boat; rather have no one at helm of tows in ordinary steering, but in making a quick turn they would be of use; after turning our helm 2 or 3 times rang bell, and then made another turn or two; went perhaps ½ length of boat before ringing first bell.

Waited a second or two after 1st bell, and then rung other 3 as quick as possible; was more than boat's length off when he was satisfied could not clear brig.

After had struck heard some one ask what business brig had to be there without a light; first saw light, a man was holding it over larboard bow of brig; witness was in the pilot-house; did not see the light till man passed it over side; sometimes anchors when coming into port in case of fog, or when have more boats in tow than can handle; never does when tide is ebb.

No particular place on boat where Captain should stand; New York has more than average of power of tow-boats; she is one of first

class, only two which have greater power, eight or ten of less; one of the greater was built for towing.

To Court.—It would have taken 5 or 6 times the length of the boat, with aid of helms of tows, to have cleared the brig; she ran, probably, 2 or 3 times her length after he starboarded his helm before he struck brig; forward lights were in a box, and a little above the rail; did not put his helm hard down, because that would have brought his tow broadside on stem of brig, and backing would not help any, whilst kept her headway the backing would help to lessen the blow.

Helm of *short* boats on starboard would not help steamer in steering.

Short boats, probably 80 to 85 feet long, their bows 30 feet back of his bows; knows were not 60 feet in rear of it; two next steamer were large sized canal boats, not over 90 feet, he thinks.

Could not possibly have cleared the brig, if a man had been at helm of each tow-boat, or 40 more.

Charles Kane (sworn); 2d pilot of New York; was on *forward* deck looking out ahead, at time of collision; at 19th St. boat headed off about S. W.; saw lights on vessels in river; several on his starboard side, at anchor; cannot say how many vessels he passed after leaving wheel; was perhaps five minutes under the deck; when he came out from under deck, steamboat was passing a vessel to east of them; witness had then got forward; she had a light; might be 100 feet *from* them; can't say as to distance; had just got on forward deck as he saw it; saw another vessel with a light farther down; perhaps 300 feet from one he passed, and above brig to eastward of her; passed her 200 or 300 feet off.

His attention to brig was first called by seeing a black spot ahead; when he got to vessel which they last passed could not tell what it was, whether a vessel or not; might be *three* times length of steamboat (she is about 230 feet long); two men were standing forward of witness at time; they were looking down the river; does not know whether they were hands or belonged to barges; all hands had been called, at witness' order, before he left the wheel, above 19th St.; did not see any light on brig when he first discovered her; must necessarily have seen it, if one had been there; after striking a light, was put down over her starboard bow from the brig; could see that plainly; saw no light above her rail, or hung in her rigging; must necessarily have seen that same light, had it been hung in her rigging.

After getting clear of brig, saw a vessel below on her larboard quarter, with a light up, and probably 500 feet off; heard signal bells when he was standing on forward deck; might then have been twice length of boat from brig when first bell rang; saw lights on vessels, say 50, all over the river; after he got clear of brig, witness looked up in rigging of brig to see if she had a light; been seven years employed on steamboat; had a light tow that night; steamer could not

by any effort have avoided the brig after witness first saw her; don't know what was done at wheel; the signals of bells were immediately obeyed on board; witness was heading down the opening before he left the wheel, and before 1st pilot came to wheel; had no difficulty in clearing a vessel previously; thinks he headed off S. W. from New York, and when he headed down to the opening, it might be a little west of south, and before 1st pilot took the wheel *was* heading to the opening; had not got into it; thinks he left the wheel about abreast State Prison dock; went to lower deck, under deck; had business which called him there; did not talk with any one there; when he went on to forward deck, he stood on starboard bow; might be 20 feet forward of pilot-house; two other persons were still forward of him, and more on *larboard* bow; saw no others on forward deck; witness was not talking to the other two men; witness was standing up; was looking ahead on both sides to see if there was anything in the way; could not tell whether any of the crew were forward when he went there; he did not relieve any one; usually goes where he can look-out, when very dark and boat is coming *into* port; Should not call it a very dark night; was a dark night, not storming at all.

Passed two vessels on larboard side before striking brig; after he left the wheel, should think they were 300 feet apart; did not hear bell ring before he saw brig; did not hear captain call out, or any one, before witness saw brig; knows engine stopped, because noise ceased; then bell rang to back, and heard engine work again.

To Court. Distance from pilot-house to stern of boat, he thinks, is 60 feet; a man could see as well where witness stood as any other point of forward deck; had not time to hail after he saw brig before bell rang.

It was not his duty to keep a look-out then; was doing nothing else; it was not considered the duty of watch on deck to keep a look-out; witness was keeping a sharp look-out *at* time.

Ralph Carwell (sworn). Assistant engineer of New York at time of collision, just before bell to slow was rung, and obeyed as quick as witness could take hold of throttle-valve; was standing close by it; then to stop and back; all were instantly obeyed; made two turns when about struck; been an engineer twenty-one years; the engine works quick; never knew her catch on centre; kept engine working back some time; *felt* light jar when boat struck; can't say number of revolutions were making; engine with tow of twenty boats usually makes *ten* to *eleven*.

John J. Kipp (sworn).—Was a deck hand on New York at time of collision; his watch on deck at time; all hands on deck; witness was 5 to 10 feet from stern, near forecastle; 20 to 30 feet he supposes to foot of pilot-house; witness was standing looking out forward, it is a general rule for watch on deck to be forward to look at and tend to lines and obey call of pilot; did not see anything of brig till boat struck her; saw vessels all round with lights; did not see any lights

on the brig; thinks he should have seen it if above deck; had noticed for some time vessels with lights, as they came down; had passed several vessels with lights; saw one to W. and one to E. of them just before striking; can't tell how far from brig; might be 30, 40, 50 to 100 feet from brig; passed them 100 feet off supposes, but difficult to judge of distances on water in night; did not hear any hail from brig; saw several vessels below with lights after getting clear of her; been 2 or 3 hours on deck at time of collision; don't recollect he was talking with Jim at time, or any other one; was keeping a sharp look out as he could; does not recollect hearing bells ring; was looking out ahead all the while; saw men behind him before he struck; supposes it 20 to 30 feet from pilot-house to stern of boat where lights were; man behind him might be 10 feet more, cannot tell how far; did not take notice whether could distinguish his features; did not see any light at all on the brig at any time: don't recollect passing but one vessel on larboard side, and that was shortly before striking; was standing near larboard side, and brig was on his larboard hand when they struck.

Francis T. Quintard (sworn).—Was clerk of steamer at time; had notice of it, ringing of bells, and the collision; was in his room on starboard side aft; heard 4 bells and always goes on deck then; not more than a minute from ringing of bells to collision; after backed off and were going past the brig, saw her; she had no light in her rigging then; I should have seen it had one been there; saw no light on board; witness looked particularly for a light and could see none; soon after passed a vessel at east with a light, but far off; thinks from 2 to 500 feet off, but not definite as to distance; both watches are always called before getting in port in night time, one is stationed forward and aft, their duty is to keep a look-out and obey orders of capt'n and pilot; thinks distance from forecastle to pilot-house is 45 feet; been 2 seasons on her; can see objects ahead as well from pilot-house as on deck; has enquired for deck hand Jim, of all persons he supposed would know him, and also looked for him; had a subpœna for him; saw other vessels with lights up that night; below after getting clear of brig quite number, probably 25; been 6 years on boat as steward and clerk; had charge of a steamer last winter as capt'n for nearly a month; would relieve pilot at wheel when he requested; boat was employed in towage to and from Sandy Hook.

Witness acted as second capt'n on New York last season; stood regular watch, and then he commanded movement of boat to pick up and land tows; witness rung bells aft and pilot rung them forward; the bells and collisions waked witness up; did not see any light at all on the brig.

George Porter (sworn).—Had a barge in tow that night, the Plymouth, on larboard side, next to steamer; her head about 20 feet astern of steamer; was on deck of his boat when he first saw brig on starboard side, and about 15 feet from her bow; his main deck 3 feet or more below the main deck of steamer; had just come forward; had

just passed close to a vessel at east with light up, 30 or 40 feet off; went below and heard steamer's bells to slow and then stop, and ran forward on his boat, to 15 feet from his stern, then saw were going afoul of a brig; she was close to them; did not see any light on her; first saw light of steamer reflecting on her; witness hailed brig and said it served them right, as they had no light up; did not see any person on board her; look particularly for a light; did not see any; looked forward in rigging; had there been a light aft, he could not have helped seeing it; after the collision, saw a light on her deck; thought it came out of forecastle; it was on forward part of deck in hand of some man, who was walking from about foremast forward with a light in his hand; had then backed off clear of brig; did not notice light after that, because got foul of another vessel on his side; she had a light up in larboard fore rigging; it was a small light; saw it plain when backing clear of brig; saw a great many others lying about with lights; went within 50 feet of some of them; been in barge line since 1839 constantly in river season; there was a man at his helm; thinks he sees vessels on river as quick as any one; went on to his upper deck before striking; could have seen from that place which boat struck had he looked for that purpose; stern of steamer had not got to brig when he reached his upper deck, but was close to her, say 10 feet off.

Joseph H. Rhoades (sworn).—Master of barge Bell in tow that night; was on upper deck of steamer at time of collision; had seen vessels with lights up that night before collision; thinks had passed some of them, probably 400 or 500 feet from the one nearest the brig; did not see brig till struck her; heard the bells; was aft of engine and started forward, but collision took place before he got forward; then saw brig and looked for a light on brig; did not see one for some seconds, when one seemed to come out of forecastle; when a man walked forward on brig's bow; held it over side; witness looked in her rigging for light; there was none there; for he could not have avoided seeing it; could no way have helped seeing the one put over her bow, had it hung in the rigging; after that saw a number of lights on both sides, 20 to 40; attention was called to it; passed one or two after collision; has sailed vessels and knew it was customary to have lights; has been afoul of vessels for want of lights, and therefore looked for lights in this case; been master of sloops for 16 years; been in habit of making observation for lights and should early distinguish a light hanging in rigging, from one in a man's hand on deck, or stationary on a wharf.

X. Judged light was coming out of forecastle when he first saw it; man moving forward with it; judged it was rising up, and concluded out of forecastle; when he first saw it was on upper deck nearly abreast of pilot-house, and 10 or 15 feet from it; this barge was next the steamboat, on starboard side; was not more than 30 or 35 feet from the man with the light; had not seen or heard any man on deck of brig, till light appeared; then saw man.

Friday, January 23d: continued.

Patrick Bergen (sworn).—Was on tow-boat Pequod; on starboard side, outside boat; was on deck after 11 o'clock that night, and when passed the city and some vessels ahead with lights on starboard and larboard side; saw one on larboard side, the length of steamer or a little more from the brig; passed one on starboard 60 or 70 feet from his boat, and probably 3 or 4 lengths of steamer from brig; first saw brig when about twice length of steamer from her, saw a black spot as he thought; he was looking out for lights; was standing about 8 feet from bow of his boat; saw no light on the brig; looked particularly for a light; his boat struck on larboard side of brig's bowsprit; the bow boat next inside of him struck brig before he did; witness shoved his man (Pigot) aboard brig, and passed him a line; heard no one on brig, and no noise of paying out chain; thinks should have heard it, if she was paying out chain; did not see any light on brig till he got to her larboard side; then saw a man on deck with lamp in his hand, near forward mast; Picket stood behind witness; supposes 4 or 5 feet off; nobody called his attention to brig; *heard* nothing of it, till he saw it himself; could not see wheels of steamer from his boat; kept his attention on brig, pretty much till struck; don't now recollect looking at anything else; his boat first came on to bow of brig, and let his line out 25 fathoms, and came round off her stern; did not think when he first saw brig that his vessel would strike her; supposes Tibbetts projected from 6 to 12 feet beyond his boat; was lying away aft of brig when *he* first saw the man with the lantern; the steamboat was backed off and gone before that; brig was probably 8 feet higher out of water than his vessel; had not seen any light on the vessel till time he speaks of; should undoubtedly have seen it, had one been on the deck before he got within 15 feet of her; had better chance to see a light when brig came in view; when along side of her, her gunwales 2 feet above his *head;* told his man to make his line fast to windlass of brig.

Amasa P. Clarke (sworn).—Was on canal boat Baker; came on deck at one o'clock that night; when abreast of city, saw a number of vessels with lights up; 8 or 10 just before the collision; and within a mile of brig, vessels were at anchor; witness' boat was towed by Tibbetts; saw two lights within probably 3 or 400 feet of brig; one on starboard side of him, probably 100 feet from tow; saw the brig about *time* the bells rang; did not see any light in her rigging; looked for one; saw a kind of dark spot where she lay; did not see any light on brig after striking; made his line fast to Belle, and drifted off Jersey side, and then looked at brig for a light; saw none.

X. No one up on his boat but himself, at time of collision; ringing of bells drew his attention to the brig; struck the Tibbetts after collision; did not strike Pequod or Bell at *all.*

Joseph Carroll (sworn).—Was captain of the Barker; was asleep below; at collision, came directly on deck; found Tibbetts afoul;

looked for a light on the brig, all over her; saw none in any part of her rigging; afterwards saw a man walking about the deck with a light.

X. Thought he was about mid-ships, with light in his hand; witness had been on deck probably 5 minutes when he saw the light; began to look for *it* within a minute after he came up, and could see none; got fastened to Bells before he saw it; was loaded with lumber, about 7 feet from water; witness was on that all the while; thinks he stood about even with deck of brig; steamer was then backing off, and was separated from brig; his boat was swung round to stern of Tibbetts, when he first looked for a light; sails Barker on shares; he pays the expenses of men and tow lines; not for injuries to vessel; except trifling damages from *carelessness* on board.

Mr. Palmer brought the action against brig Palmer; was in New York; witness went to lawyer with M. Schuyler, who is agent of boats; witness never employed any person to bring this action.

John Reed (sworn).—Also on Barker; ran upon deck immediately after collision; saw no light on brig; looked for it particularly; she was about 100 feet from him; he was under stern of Tibbetts; his attention was called to absence of light; looked every way for it; 5 or 6 minutes; afterwards saw one, between her bow and forward mast; it was in a man's hand; he was moving about on deck; saw other vessels about there with lights up; thinks 25 or 30 below him; one on N. York side, 300 feet (one on N. York side 300 feet) from brig; could see her light distinctly.

X. Saw the lantern which man had; it was hanging by his side; his attention was directed to light 5 or 6 minutes; thinks light was about middle of deck, forward of mast, near to it; the gunnels of brig were about seven feet higher than top of lumber on his boat.

The two tows, one at his side, and outside ahead, were cut off by collision; his boat drifted astern of Tibbetts; was so far back from brig as to be able to see man on her deck; was just off her starboard bow 100 feet off, when he first looked for light; the steamer was backing, and working back through the water; could not tell where he stood; whether she was clear of the brig.

X. That was case when wit. first came on deck.

Gilbert J. Riley (sworn).—Was on board the Tibbetts; was on deck from 12 o'clock; shortly before collision, passed one or two vessels with lights up, from 300 to 500 feet off, as he judged, but was on starboard side, and could not speak with certainty of distance.

Was looking out ahead; was standing on deck load of ship plank, forward, about 6 feet above the water; to all appearance there was a firstrate opening through the lights; witness continued his look-out, and first thing he saw was a dark spot, about six lengths from steamer, and when within 4 lengths, discovered it to be a vessel; looked sharp about her, and could see no light anywhere on her; stood a moment, and finding his barge was going foul of brig, head

on; then turned and ran aft to get a boy out of his cabin; on passing him up on deck load, the collision occurred; first and only light he saw on brig, was one brought forward, and held over her bows near his boat by a man; saw no light at all till then.

X. The New York had then begun backing. Thought the opening he saw an unusually good one; there is sometimes a difficulty in finding an opening right; never saw a better one, apparently. Witness is captain of Tibbetts, and was ½ owner at the time; her papers were not made out; he did not employ any lawyer to bring a suit. Mr. Moore was in Troy at the time, and also W. Tibbetts; does not know that either of them were here before suit brought. Witness came to the Hall at request of Mr. Schuyler, on the business.

Collision was 5th or 7th of November: telegraphed Moore and Tibbetts the next morning; rec'd a telegraph reply for witness to attend to the business, and do the best he could, as neither of them was able to come to N. York. Witness has no interest in vessel now.

Samuel M. Williams (sworn). Was on board the Sea Bird, on larboard side; first tier astern, 2d tier in the tow behind Oneida Chief; came on deck the upper part of city. Did not see brig till collision; saw no light on her; looked in her rigging for one. Noticed absence of light, just after getting clear of her; attention not particularly called to it when they struck.

As soon as struck, his boat was brought up against one ahead. He looked forward, and could only see spars and rigging of brig; could see her fore-yard and nearly ½ way down to her deck; then saw no light; it was after steamer backed off and drifted down; could see whole of her, and then looked particularly and could see no light on her. Saw other lights in river; got foul of one vessel in getting clear of brig.

X. He towed on 6 or 8 feet line; had a hand on deck with him, were both standing on quarter-deck talking and looking around, and 5 or 6 feet above the water, and farther aft their gangway of N. York stern; about even with her stern. The steamer has a promenade deck. The boat astern of him came into his boat after collision, not before; she was about 6 feet astern, and witness' boat struck one ahead of her; whether driven up by the rear boat or by the concussion of the collision he cannot say.

Peter Devoe (sworn). Pilot of steamboat 5 or 6 years; followed river 25 or 26 years; a vessel at anchor with 90 fathoms of chain; could steer or sweep 100 feet or more, if no one is at her helm. Vessel anchored on river on strong ebb tide, will head towards Jersey shore.

Knows *Salisbury*; he is a skilful and experienced pilot. Witness is pilot of the boat Baltic. If coming down, found a vessel ahead and so near as could not be avoided, it would be safer to steer the tow, so as to split the tow boats, than to come down broadside, it would do less damage to one at anchor, for by running her between them, their breast lines would have a tendency to check the blow

before parting; but cannot say one at anchor would receive less damage by side blow than by direct blow by one of the tows, going on sideways would injure the tows much more.

Don Fuller (sworn). Pilot on North River of tow and passenger steamers. Mr. Salisbury is considered a skilful pilot; witness considers him of first class, and is so spoken of by other pilots.

James B. Edwards' deposition *ante.*

James Picket do do.

For libl't (Rae).

James I. Wilkie (sworn). Sandy Hook pilot; knows the brig; anchored her in the river the day before the collision; nearer to J. side than N. York; it was in the morning; anchored her in the usual and proper place; left her shortly after anchoring her; about nine (offer to prove that he directed crew to put up a light, objected to and excluded).

Saw her the next morning about low-tide, adrift about off pier No. 2; appointed to be on board at daylight to take her to sea. (Statements of crew to pilot offered in evidence, objected to and rejected.)

There were a number of vessels at anchor off the battery when he came there in the morning. Had anchored her off about abreast of pier No. 6; he found, in the morning, a number of vessels anchored above and below the brig. Witness has heard the statement of the tow conducted down. In his judgment that tow could not have been taken through those vessels with the tide and wind as it was. The course of the tow would have varied more easily by having the tillers manned, than by not having them; should consider the difference a very important one; it is so in towing vessels up or to sea. In towing alongside, it is usually to have wheel of steamer midships; but in narrow passage it is important to use both; but if the tow is behind, it makes great difference whether the tow's helm is used.

X. Been pilot 8 years, and apprentice 5 years; N. Y. pilot. Witness took brig to sea afterwards; drew 12 feet out and 13½ feet coming in; never had more than two vessels in tow at same time. Never piloted a tow on North River; no experience in that business. Great fault to leave a vessel at anchor in a dark night without a light; a light is very apt to get dim towards morning, and if weather is thick, might not be seen at all. Was careful to anchor the brig in a good place, and nearest N. J. shore, with intent to get her under way early in the morning. Went out from pier 6; does not recollect whether had a steamer to take her out; most generally has a steamer to carry vessels off to anchorage, and thinks he had none, but don't recollect; generally goes off in slack tide.

Supposes could sheer the brig 80 feet either way, on a 90 fathom chain, if wind not too strong; could not sheer so far against strong wind; could sheer to clear of a steamer, if he knew the course of steamer; better to have a man at wheel in an anchor watch. If he anchored without a light up, should have all hands on deck; but would not do it. Foreign vessels are very particular to have lights

up; are more cautious than home vessels. Gave the brig about 35 fathoms of chain, and ordered the men to have plenty of chain on deck, ready to pay out in case of blow or necessity. It might be necessary in the night to examine below, and see if coil of chain is clear.

For defence.

Amos Comstock (sworn). Has commanded tow boats on river about 20 years; knows Salisbury; in steering a tow relies upon steamer, and tows in difficult places. Generally use helms alongside, a man at each helm; in passing vessels, &c., helms alongside would be of use, and those astern also, as it would make a longer rudder.

Testimony closed.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the second day of March, in the year of our Lord one thousand eight hundred and fifty-two—

Present the Honorable

SAMUEL R. BETTS,
District Judge.

ISAAC P. RAE, owner of the brig Sarah Johanna,
vs.
THE STEAMBOAT NEW YORK, C. W. DURANT & Co., Claimants.

This case, having been heard on the pleadings and proofs, and argued by the advocate for the respective parties, and due deliberation being had in the premises: It is now ordered, adjudged, and decreed by the Court that the libellant recover in this action against the steamboat New York, her tackle, &c., the damages sustained by the collision in the pleadings mentioned, and that the said steamboat, her tackle, &c., be condemned therefor. And, on motion of the proctor for the libellant, it is further ordered that it be referred to a Commissioner of this Court to ascertain the damages sustained by the libellant. It is further ordered that it be referred to a Commissioner of this Court to ascertain the damages sustained by the libellant by the said collision, and to report thereon to this Court with all convenient speed.

ISAAC P. REA
vs.
THE STEAMBOAT NEW YORK. } On Reference.

BETTS & DONOHUE.
W. J. HACKETT.

March 13, 1852.

Henry R. Secor (sworn). I am a shipwright, employed in the

repairing and rebuilding of ships for 25 years in the city of New York. My firm is Charles A. Secor & Co.; that is the business of the firm. I know the Danish brig Sarah Johanna, and saw her in November, 1850. I first saw her in the North River, lying between piers 8 and 11, in a damaged condition. She had a hole knocked in her larboard bow; 4 to 6 feet was the breakage; the clear hole was about 3 feet square, and was about 2 feet from the stem, about a foot above the water line; it was at the water's edge when lying on an even keel; the hole was entirely through; a man would have crawled in it; the plank right about there and all started, and the timbers, 8 or 10 of them inside, were broken; the ceiling all round there was broken; a large rider that went round the bow was also broken; the stem was started, and the point of the cutwater was carried away; her deck frame forward was started, both sides all over; the vessel was jarred fore and aft, and the water way seams started; it started all the pitch out. The outside seams were all strained so it had to be caulked all over. There were three or four timbers in the hole three feet square broken; the timbers were 9 or 10 inches thick; the outside planking over that which was broken was 3 to 3½ inches thick; the most of the ceiling was 4 inches thick, the rest was 3 to 3½ inches; the breast hook was inside of that, and 20 inches thick through the throat; the rider broken was 9 by 10 inches thick; the forecastle deck, the lower forecastle was torn up, and the beams of that floor were broken; the timbers, the plank and ceiling were of white oak; no better timber could be put in a vessel, than was put in that; the part of the vessel broken was intended, and is needed to be, the strongest part of the vessel; the annexed Exhibit A to the bill of repairs, I put on the vessel; our firm repaired the vessel; those repairs were necessary to repair that vessel; I think the vessel's market value was injured by the shock, even after the repairs; I should think from $2000 to $3000 less value after repaired, than before the injury; I didn't see inside, but judge from what I see; that is my judgment from my experience in matters of this kind.

The vessel was a new vessel; I should judge not more than a year old.

Cross-examined. I made a thorough repair, and did all we thought necessary, as far as we could see; we had her in the dry dock; all above her copper was recaulked again; the value of the vessel, I should suppose before she was damaged, was from $15,000 to 20,000; I judge from the damage to her, that her market value was less $2,000, because her stern was started, and to have made her good, every bolt would have to be taken out.

When I made the repairs, $1,500 more would have put her in perfect condition; then she would not have been as good as before.

HENRY R. SECOR.

Examination taken, reduced to writing, and sworn to the 13th day of March, 1852, before me.

JOSEPH BRIDGHAM,
U. S. Comm'r.

By consent of parties the examination adjourned until Tuesday next, the 16th inst., at 10 o'clock A. M.

Tuesday, March 16th, 1852.

The parties met pursuant to adjournment, and the examination is continued as follows:—

Zeno Secor sworn.—I am one of the firm of Charles H. Secor & Co., and have been engaged in the business of repairing ships in the city of New York about 20 years; I remember the brig Sarah Johannah; I made out the original bill for repairs, of which the annexed Schedule A is a true copy; these repairs were all necessary to repair the damage done to the brig by the collision; and every charge there is made according to our regular price; the work proceeded as expeditiously as possible; she was jarred all over by the shock, and I think the vessel was worth 2 or 3,000 less after she was repaired than before the shock; I would not have it done to a vessel of mine on any account, because it starts her from her original position or shape.

Cross-examined.—The brig, I think, was caulked all over; I know she was; we rebolted and refastened her all over as far as we thought necessary; I don't know of any bolts that were started that were not refastened; she was started all over; didn't take particular notice, and that her mould or model was started; when a vessel receives a shock of this kind she shows it soon in carrying cargoes, and requires frequent repairs; I have seen vessels which have been moved from their position by getting ashore, which required repairs; I have never seen a vessel which was repaired sometime after a collision which showed indications of having received damages by a collision; I might have seen such, but cannot tell.

ZENO SECOR.

William Thompson sworn.—I am a ship broker, and have been such about 11 years in the city of New York; a reasonable demurrage of a brig of 250 tons in November and December is $25 per day, under ordinary circumstances; if a full crew on board it would be about $30.

Cross-examined.—I mean by ordinary circumstances, a vessel without a crew on board.

WM. THOMPSON.

Gustave Kraft sworn.—I am master of a vessel, and have been such for 8 years, and have traded to New York; a reasonable de-

murrage of a brig of 250 tons, with a crew on board, is from 30 to 35 dollars; I belong to Sweden.

GUS. KRAFT.

Niels Sjsberg sworn.—I am master of a vessel, and have been since 1839; I am from Sweden; I have traded to New York; the reasonable demurrage of a Danish brig of about 250 tons, is $25 per day with no crew on board; with a full crew on board it would be $30 at least, and that would depend on *the* season; Nov. and Dec. would be the worst season; then with provision and crew on board, demurrage would be 25 per cent. more at least.

N. SJSBERG.

Frederick Ornskow (sworn).—I have been master of a vessel for 3 years; the reasonable demurrage of a brig of 250 tons is $30 when not ready for sea, but with a crew on board when ready for sea, and with a crew, 25 per cent. more.

Cross-examined.—I have been sea captain 3 years; when I speak of demurrage, I speak of demurrage in England; I never was here before; I am a Russian; I know nothing of the customary demurrage of New York.

Redirect.—I am now in command of a brig of 250 tons; I know what my demurrage would be worth to me.

FRED. ORNSKOW.

By consent of parties the examination is adjourned until Thursday next, at 11 o'clock, A. M.

Thursday, March 18*th.* Adjourned to Tuesday next, March 23, at 11 o'clock A. M.

Tuesday, March 23, 1852. The parties meet pursuant to adjourn ment.

Counsel for libellant produced the affidavit of Louis C. Daklstrom, and consent hereunto annexed, marked Schedule B.

Louis C. Daklstrom sworn.—Am a cashier in the office of Funcke & Mincke, and was in November, 1850; I remember the accident to the Sarah Johanna at that time; she was taken to the ship carpenter's as soon as she could be, probably one or two days after the accident; can't tell the exact time; the delay was in order to hold a survey on her; she proceeded to sea between the 11th and 14th, either on the 12th or 13th of December; she was despatched as rapidly as she could be after she came from the ship carpenter's hands; the collision took place on the 5th or 6th of November.

Cross-examined.—We were making repairs on her all the time she was here; can't tell the day when the carpenter left her; I can't say how long Secor was engaged upon her; I went aboard the vessel once or twice while she was repairing; I suppose she was despatched as soon as she could be; the item of translation services in the annexed bill *marked B,* are for my services as interpreter.

L. C. DAKLSTROM.

Adjourned by consent of parties until Tuesday, March 30th, at 10 o'clock A. M.

April 23*d*, 1852. Examination closed by consent of parties.

JOSEPH BRIDGHAM,
U. S. Com'r.

Schedule A, J, B.

DANISH BRIG SARAH JOHANNA AND OWNERS

TO CHAS. A. SECOR & CO., DR.

For the following ship carpenter's work and materials furnished to repair damages sustained to said brig while lying at anchor in the North River. Repairs commenced on the 12th of November and ended Dec. 3d, 1850.

1850.		
Nov. 12.	To 50½ ft. white oak for timber @ 4*s.*	$25 25
	" 54½ ft. 4 in. oak plank face, @ 2*s.*	13 63
	" 192 ft. 3 in. oak plank face @ 1*s.* 6*d.*	36 94
	" 83½ ft. 2½ oak plank face @ 1*s.* 3*d.*	13 47
	" 1 7 in. white oak knee, 8 inch	7 00
	" 9 ft. pine 4d, 1 breast hook $15 00	15 38
	" 1 large breast hook	18 00
	" 20 ft. crooked oak rider @ 4*s.*	10 00
	" 2 ft. 6 in. oak @ 2*s.* 6., 12 locust trenails 4*d.*	1 13
	" Trenail wedges 2*s.*, 12 worked plank 4*d.*	6 25
	" 19 ft. white-oak, cutwater, 4*s.*	9 50
	" 3-2 in. plank 8*s.*, 6 in. ft. pine board 4*d.*	5 67
	" 3 board ⅛ 8 ft. oak, channel buttons 1	1 56
	" use of floating and hanging stages while repairing	7 50
	" use of steam stove and apparatus for steaming plank	8 00
	" truckage, 3 loads of timber and plank @ 20*s.*	7 50
	" cartage 21*s.*, 224 lbs. spun oakum @ 10 c., 6 seam mops	28 96
	" use of B. and irons for hausing and caulking, and ret. of them	3 50
	" dressers 6*s.*, 2½ bbls. pitch 16*s.*, ½ bbl. rosin 7*s.*	6 63
	" 8½ doz. white-oak wedges 6*s.*, 1 lb. cotton ratt 1*s.*	6 50
	" 18 lbs. cut nails @ 8*d*, 32½ lbs. copper spikes 2*s.*, 3¼ lbs. copper bolt 4*s.* 6*d.*	10 64
	" 94¼ lbs. wrought copper bolts 2*s.* 6*d.*, 296 copper rings, @ 6*d.*	31 27
	" 53 lbs. tarred felt 1*s.* 1*d.*, 1 lb. nails 1*s.* 6*d.*	6 81
	" 25 lbs. copper nails 2*s.*, 201bs. stem copper 2*s.* 3*d.*	11 88
	" 56 lbs. sheet lead @ 8*d.*, 2 lbs. stem nails *f*	5 67

To 157 days' work, carpenters and caulkers, 19*s*.	372	78
" 18 days foreman, 20*s*.	47	00
" attendance for self, making survey and attending repairs	30	00
" ½ day's work, 19*s*.	1	19
	$749	61

For the following Blacksmith's work:—

Rep'g 47 bolts 45*s*., 2 pair rolocks 8*s*. Rep'g and shank'g augers	9	13
Rep'g cold chisel and crowbar 3*s*. Do. slice-bars 2*s*. Do. martingale cleat 21*s*.	1	13
Rep'g 3 copper bolts 3*s*. Do. band 2*s*., 355 bolts 1*s*., 110 W. spikes 1*s*.	58	75
20 lbs. screwbolt nuts 1*s*. 6*d*., 1 hog shackle 5*s*., 4 iron knees 16*s*.	12	38
Making round sheet-iron stem plate 64*s*., 140 washers 6*s*.	16	75
W. spikes 1*s*., 6 W. bolts 1*s*., 52 nails 3*d*.	2	42
Rep'g 4 marlinspikes, 1*s*. Rep'g clamp-screw, 12*s*.	2	00
2 double keys, 2*s*. Rep'g 5 start hammers, 2*s*.	1	75
3 new start hammers, 4*s*. Do. slice-bars, 2*s*.	1	75
Correct,	$855	67

P. F. CALLISEN.

Rec'd pay't Dec. 6, 1850.

CHAS. A. SECOR & CO.
per H. P. GARDNER.

Nov.	Damage done to small boat	6	00
	Translating protest, 10. Boat for surveyor, 1 50	11	50
	Captain Ellis, 2 surveys	10	00
	Steamer for towing, 6 00. Surveyor 12 50	18	50
	Steamer for towing, 6 00. Balance dock, 65 04	71	04
	Two surveys (Merry), $10. Pilotage to S. dock, 5 00	15	00
	Oil and paints, L. & Peterson, $15 93. Joiner's bill, 50 75	66	63
	C. A. Secor & Co. (proven)	855	67
	Pilotage to N. R. 8 00. Copy cert. on hull, 5 00	13	00
	Wharfage, 16 50. Advertising for bot. 6 00	22	50
	Notary, $23. Lawson, broker, 30	53	00
	Translating services	10	00
	Postage and petty ex.	10	00
	Commission on dis.	60	52
	Com. on bonds	93	75
	Ins. on bottomry bond	101	25
		$1,489	00

On the affidavit of Funke, as to the payment of the said several sums of money, shall be sufficient as to the amount, and the fact of rendering the same. The question of their allowance on the report is allowed.

W. J. H.

Schedule B, J, B.

U. S. DISTRICT COURT:

ISAAC P. RAE
vs.
THE STEAMBOAT NEW YORK, her tackle, &c.

SOUTHERN DISTRICT OF NEW YORK, ss:

Louis C. Daklstrom, of said District, being duly sworn, says, that he is the cashier in the firm of Funck & Meincke, in the city of New York, and was in November and December, 1850. That this deponent well remembers the Danish brig Sarah Johanna and the collision that occurred to her in the port of New York in November, 1850. That the annexed schedule is a true and accurate list of moneys expended by Funcke & Meincke in repairing the damages caused by said collision; that all of said bills were paid by said firm in full, and at the amounts stated in said schedule; and to the best of the knowledge, information, and belief of this deponent, all of said bills were reasonable and necessary by reason of the damages sustained by said collision.

L. C. DAKLSTROM.

Sworn to before me, this 18th day of March, 1851.

CHAS. ELIOT SCOVILLE,
U. S. Com'r.

DISTRICT COURT OF THE UNITED STATES,
for the Southern District of New York:

ISAAC P. RAE
vs.
THE STEAMBOAT NEW YORK, her tackle &c.

Commissioner's Report.

In pursuance of a decretal order made in the above-entitled cause, on the second day of March, in the year of our Lord one thousand eight hundred and fifty-two, by which, among other things, it was referred to the undersigned, one of the Commissioners of this Court, to ascertain and compute the amount due the libellant for damage by collision, and to report thereon to this Court with all convenient speed, I, Joseph Bridgham, the Commissioner to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and claimants, and have taken and examined the testimony

offered in support of the libellant's claim, and do find that there is due to the libellant for repairs, the sum of . . $1,489 00
For demurrage, 36 days at $30 per day . . 1,080 00
and deterioration in value occasioned by collision 2,000
amounting in the whole, to the sum of four thousand and five hundred and sixty-nine dollars.

Dated the *twenty-seventh day of April, A. D.* 1852.

All which is respectfully submitted.

JOSEPH BRIDGHAM,
U. S. Commissioner.

BETTS & DONOHUE,
Proctor for Libellant.

Com. 5 days to except.
Filed the 27 day of April, 1852.

Claimants' Exceptions to Comm'rs Reports.

U. S. DISTRICT COURT,

In Admiralty.

STEAMBOAT NEW YORK } ads. BRIG SARAH JOHANNA.

The claimants except to the Commissioner's report made in this cause for the following causes, that is to say:—

First. Exception to the repairs. The whole bill amounts to $1,489 00; the items for repairs made by Secor, is proved at $855 67, and is not excepted to. The items excepted to are—

Damage to small boat	$6 00
Translating protest	10 00
Boat for surveyor	1 50
Cap'n Ellis's bill for 2 surveys	10 00
Survey on hull, &c.	12 50
Merry's bill of 2 surveys	10 00
Copy certificate on hull	5 00
Advertising for bottomry bond	6 00
Notary's bill	23 00
Broker's bill, Dawson	30 00
Translator's services	30 00
Postage and petty exp's	10 00
Commissions on discount	60 52
Commissions on bond	93 75
Insurance on bottomry bond	101 25

The exceptions to these items are taken on the ground that they were not necessary. The item of damage to the small boat excepted on the ground that no proof was made that the boat was damaged by the collision.

Second Exception. That no allowance ought to be allowed for demurrage. If compensation for alleged delay is recoverable, it is not allowable in this form, nor in the amount reported by the Commissioner.

Third Exception. Claimants except to any allowance for alleged deterioration; but if any allowance can legally be made for this cause, they except to the amount so allowed.

W. J. HASKETT,
Pro. for Cl't.

Filed May 8, 1852.

ISAAC P. REA
vs. } 8, 504.
THE STEAMBOAT NEW YORK, her tackle, &c.

This case having been heard on exceptions to the Com'rs report, and submitted on briefs and points by the advocates, &c. (copy caption), that the exceptions taken by the cl'm'ts to the Com'r report be allowed to the extent of the sum of one hundred and ninety-five dollars, and that the Com'r report as to the residue be confirmed, and that the lib't recover in this action against the Steamboat New York, her tackle &c., the sum of three thousand eight hundred and seventy-five dollars, together with costs to be taxed, and that the said steamboat, her tackle, &c., be condemned therefor.

And it is further ordered that each party pay his own costs on the exceptions.

And it is further ordered that unless appeal be taken to this decree within the time limited and prescribed by the rules of this Court, that the stipulators for costs and value pay into the registry of the Court the amount of the stipulations for costs and value, and that the Clerk distribute the proceeds in satisfaction of this decree.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Monday, the fourth day of April, in the year of our Lord one thousand eight hundred and fifty-three: Present, the Honorable Samuel Betts, District Judge.

ISAAC P. REA
vs. } 8, 504.
THE STEAMBOAT NEW YORK, her tackle, &c.

This case having been heard on exceptions to the Commissioner's Report, and submitted on and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the Court, that the exceptions taken by the claimants to the Commissioner's report be allowed to the extent of the sum of one hundred and ninety-five dollars, and that the Commissioner recover in this action against the

Steamboat New York, her tackle, &c., the sum of four thousand three hundred and seventy-four dollars, together with the costs to be taxed, and that the steamboat, her tackle, &c., be condemned therefor.

And it is further ordered that each party pay his own costs on the exceptions; and it is further ordered that unless an appeal be taken to the decree within the time limited and prescribed by the rules of this Court, that the stipulators for costs and value pay into the registry of this Court the amount of the stipulations for cost and value, and that the Clerk distribute the proceeds in satisfaction of this decree.

In Admiralty.

U. S. DISTRICT COURT,
Southern District of New York:

THOMAS C. DURANT *et al.*, owners of the Steamboat New York, ads.
ISAAC P. REA, owner of Brig Sarah Johanna.

Notice of Appeal.

Take notice that the above claimant and respondent herein appeals for the decree of this Court in this cause.

Yours, WM. JAY HASKETT,
P'r for Cla'm't.

To G. W. MORTON, Esq., *Clerk.*

13th April, 1853.

Filed April 13, 1853.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
for the Southern District of New York, in the Second Circuit:

THE STEAMBOAT NEW YORK, THOMAS C. DURANT and others, Claimants and Appellants,
vs.
ISAAC P. REA, Libellant and Appellee.

Bond for Costs.

Know all men by these presents, that we, Thomas C. Durant, Edward Fish, and E. B. Litchfield, are held and firmly bound unto the above named libellant and appellee in the sum of nine thousand dollars, to be paid to the said libellant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas the above named claimants and appellants have prosecuted an appeal to the Circuit Court of the United States for the

Southern District of New York, Second Circuit, to reverse the decree rendered in the above entitled suit by the Judge of the District Court of the United States for the Southern District of New York:

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered, and taken and acknowledged this 19th day of April, 1853, before me.

GEO. W. MORTON,
U. S. Commissioner.

THOS. C. DURANT,
EDMUND FINK,
E. B. LITCHFIELD.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Edmund Fish and Elistus B. Litchfield, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

Sworn to this nineteenth day of April, A. D. 1853, before me,
GEO. W. MORTON,
U. S. Com'r.

EDMUND FISH,
E. B. LITCHFIELD.

Filed April 19, 1853.

In Admiralty.

U. S. CIRCUIT COURT:

ISAAC P. REA, owner of the Brig Sarah Johanna, Libellants and Appellants,
vs.
THE STEAMBOAT NEW YORK, Thomas C. Durant *et al.*, Claimants and Appellants.

Copy Appeal.

To the Honorable the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

The appeal of the above named appellants respectfully showeth, that on or about the ninth day of November, in the year of our Lord one thousand eight hundred and fifty, the above named libellants exhibited their libel in the District Court of the United States for the Southern District of New York against the Steamboat New York, in a cause civil and maritime, for collision, praying, among other

things, for the reasons set forth in libel, to which for the contents thereof these appellants crave leave to refer that such steamboat New York might be sold, condemned, and sold to pay the demands of the libellants and costs, and also that process might issue against the master thereof; that thereafter process was duly issued out of the said District Court against the said steamboat New York, her tackle, &c., and said vessel by virtue thereof was arrested by the said Marshal, and on or about the 11th day of November, 1850, these appellants duly appeared in said District Court and filed their claim to the said vessel as the owners thereof, and by consent of the libellants a bond stipulation in the sum of ten thousand dollars was filed in said Court, and the said steamboat thereupon discharged from custody; that thereupon and on the 21st day of January, one thousand eight hundred and fifty-two, these appellants filed their answers to said libel; among other things they denied that the libellants were entitled to recover the said sum claimed by the libellants, and prayed that the said District Court would be pleased to pronounce against the said libel and condemn the said libellants in costs, as by reference to said answer will more fully appear, and to which for the contents thereof the appellants crave leave to refer.

That thereupon the libellants filed their replication to said answer, and afterwards, on the 21st and 22d days of January, one thousand eight hundred and fifty-two, the said cause came on to be heard before the Honorable Samuel R. Betts, Judge of the said District Court, upon the depositions and proofs adduced by the respective parties, and the said Judge, having advised thereon, on the 2d day of March, one thousand eight hundred and fifty-two, made a certain decretal order and decree in said cause, whereby it was among other things sentenced and decreed that the libellants recover of the said steamboat his damages in the premises, as by a reference to said order will more fully appear, and that the same be referred to a Commissioner to ascertain the amount thereof.

That thereupon and on the 4th day of April of the next, by consent of the respective proctors, and on the submission to the Court of exceptions to said report, a final decree was then entered therein for the sum of four thousand three hundred and seventy-four dollars, and interest damages, besides costs, to be taxed; and these appellants are advised and insist that the said decretal order and decree is erroneous, inasmuch as the libellant was not entitled to the amount by him claimed, and his said libel should have been dismissed.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of the libellants to the next Circuit Court to be held in said district, and on such appeal they intend to have the said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court.

And they pray that the record and other proceedings may be re-

1487

turned to the said Circuit Court, and that the said decree may be reversed and said libel dismissed, or such other decree therein made as to the said Circuit Court shall seem just, and that the appellee may be condemned to pay the appellants their costs and damages.

(Signed) W. J. HASKETT,
Proctor.

Admit service of the within, 21st April, '51.

C. & D.

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Saturday, the fourth day of November, in the year of our Lord one thousand eight hundred and fifty-four: Present, the Honorable Samuel Nelson, Circuit Judge.

ISAAC P. RAE, Libellant and Appellee,
ads.
THE STEAMBOAT NEW YORK, her tackle, &c., Respondents and Appellants.

This cause having been reached in its order on the calendar, and argued by Geo. F. Betts and Wm. C. Noyes, Esquires, on behalf of the libellants and appellees, and F. B. Cutting and W. Q. Morton, Esquires, for appellants, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, that the decree of the Court below be affirmed, and that the libellant and appellee recover the sum of $4,174, and his costs in the District Court, with interest from the day of March, 1853, with his costs in this Court to be taxed.

A copy from the Minutes.

Filed the fourth day of November, 1854.

Petition on Appeal.

THE STEAMBOAT NEW YORK, her tackle, apparel, &c., THOMAS C. DURANT *et al.*, Claimants and Appellants,
vs.
ISAAC P. REA, owners of the brig Sarah Johanna, Respondents.

To the Hon. Supreme Court of the United States:

The appeal of Thomas C. Durant, Charles W. Durant, Septimus Lathrop, the above-named claimants and appellants, respectfully showeth, that on the ninth day of November, one thousand eight hundred and fifty, the above-named Isaac P. Rea filed his libel in the District Court of the United States for the Southern District of New York, against the Steamboat New York, her tackle and apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the brig Sarah Johanna, by collision with the said steamboat New York, in the Hudson River, of

the port of New York, in the State of New York; and that the said steamboat New York was arrested upon process issued upon said libel, and was discharged upon your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and the said libellant replied thereto; and such proceedings were had in the said cause that, on the fourth day of April, 1853, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the said libellant recover against the said steamboat New York, her tackle, &c., the sum of four thousand three hundred and seventy-four dollars.

And that after such final decree, your petitioners duly appealed therefrom to the Circuit Court of the United States for the Southern District of New York; and the said cause was removed thereby into the said Circuit Court, and there tried anew, and such proceedings had in the Circuit Court, that afterwards, to wit, on the fourth day of November, 1854, the said Circuit Court made a final decree in the cause; whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said Circuit Court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants appeal from the whole of said decree of said Circuit Court to the Supreme Court of the United States, and respectfully pray that the said decree of the said Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the Circuit Court, and every part thereof, may be reversed, and a decree be made dismissing said libel with costs, or such other decree as to the said Supreme Court shall seem just.

NEW YORK, *December 7th*, 1854.

THOMAS C. DURANT,
for himself, &c., Appellants.

F. B. CUTTING,
Proc. for Appellants, and of Counsel.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
for the Southern District of New York, in the Second Circuit:

THE STEAMBOAT NEW YORK, her tackle, &c.

vs.

ISAAC P. RAE, Libellant and Appellee.

Bond on Appeal for Costs and Damages.

Know all men by these presents that we, Thomas C. Durant and Moses H. Grinnell, of the city of New York, are held and firmly bound unto the above-named Isaac P. Rae, appellee, in the sum of

five thousand dollars, to be paid to the said libellant and appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of December, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas, the above-named respondents and appellants have prosecuted an appeal to the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States for the Southern District of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered, and taken and acknowledged, this 7th day of December, 1854, before me.

THOMAS C. DURANT, [L. S.]
M. H. GRINNELL. [L. S.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Thomas C. Durant and Moses H. Grinnell, of the city of New York, being duly sworn, depose and say that each of them reside in this district; that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

M. H. GRINNELL,
THOS. C. DURANT.

Sworn to this 7th day of December, A. D. 1854, before me.
SAML. R. BETTS.

I approve of the within bond, and the sufficiency of the sureties thereto.

SAML. R. BETTS.

Filed this 7th day of December, 1854.

Citation.

By the Honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the second Circuit, to Isaac P. Rea.

Whereas, Thomas C. Durant, Charles W. Durant, and Septimus Lathrop, claimants of the Steamboat New York, her tackle, apparel, &c., have lately appealed to the Supreme Court of the United States, from the decree lately rendered in the Circuit Court of the United

States for the Southern District of New York, in the second Circuit, made in favor of you, the said Isaac P. Rea, libellant, against the said Thomas C. Durant, Charles W. Durant, Septimus Lathrop, claimants, stating that the said decree is erroneous, and praying that the same may be reversed, and the cause heard anew.

And the said Thomas C. Durant, Charles W. Durant, and Septimus Lathrop, having duly entered the said appeal to the Supreme Court of the United States, and filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, in the city of New York, in the Southern District of New York, in the second Circuit, the seventh day of December, in the year of our Lord 1854, and of the independence of the United States the seventy-ninth.

SAML. R. BETTS.

F. B. CUTTING,
Pro. and of Counsel.

Admission of Service.

SUPREME COURT OF THE UNITED STATES:

THE STEAMBOAT NEW YORK, her tackle, apparel, &c., THOMAS C. DURANT *et al.*, Claimants and Appellants,

vs.

ISAAC P. REA, owner of the Brig Sarah Johanna, Respondents.

We accept due service of a copy of the citation and petition of appeal in this cause for the above appellee.

December 7, 1854.

C. DONOHUE,
Proctor Res.

F. B. CUTTING,
Pro. and of Counsel for App'ts.

Filed Dec. 9, 1854.